Supreme Court, U.S.
FILED

96 873 SEP 27 1996

No. [redacted]

In the

Supreme Court of the United States

OCTOBER TERM, 1996

APOSTOLOS TSIMBIDAROS
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AND PAINTERS LOCAL UNION 1719
Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Second Circuit.

PETITION FOR WRIT OF CERTIORARI

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31 pp

QUESTIONS PRESENTED

The petitioner, Apostolos Tsimbidaros, pursuant to Supreme Court Rule 10, respectfully requests that the Honorable United States Supreme Court grant a WRIT OF CERTIORARI in order to: 1) correct the errors of the lower federal courts; and 2) align the lower federal courts in accordance with the text and spirit of the Americans with Disabilities Act. The questions presented here are:

1) The Petitioner, a disabled senior citizen, suffered severe disabilities in an accident incurred while the lawsuit was pending. Even though the Respondents subjected the Petitioner once before to a deposition, the Respondents scheduled a second deposition an hour and a half away from the Petitioner's home during the worst month of the New England winter, only several weeks after the Petitioner underwent a traumatic surgery. The Petitioner sought "reasonable modifications" in accordance with the Americans with Disabilities Act and with Rule 30(b) of the Rules of Federal Civil Procedure. The District Court failed to ensure reasonable modifications, to postpone the deposition to a later date, and to provide an alternative method of deposition.

The District Court granted the Respondents Motion to Dismiss based on the Petitioner's nonappearance at the second deposition. Did the District Court err, in defiance and contradiction of Rule 30(b) and the Americans with Disabilities Act, when it granted the Defendant's Motion to Dismiss?

2) According to 28 U.S.C. § 455(a), a judge or magistrate must disqualify himself or herself in any proceeding in which his or her impartiality

may reasonably be questioned. The rulings of Judge Daly, the District Court judge who dismissed the suit, and Magistrate Thomas P. Smith, the magistrate Judge Daly assigned all pre-trial procedures, exhibited a pro-union bias. For example, the District Court prohibited the Petitioner from bringing to light possible RICO violations committed by unions, baselessly dismissed the case brought by the disabled Petitioner against two powerful unions, sanctioned violations of the Americans with Disabilities Act and the Rules of Federal Civil Procedures, and allowed these unions to continue their discriminatory practices. Did the District Court commit error when it failed to provide an impartial adjudicator considering these rulings and considering that the Magistrate was a card-carrying member and supporter of a union? Did the lower court err when it failed to appoint an impartial judge?

3) It is well established that a court may impose costs "reasonably" incurred by a party against the other. A court may not force a party to be responsible for the unreasonable costs of the other party. Several weeks before a January 26, 1996 scheduled deposition, the Petitioner notified the Respondents and the District Court that he was physically incapacitated and unable to attend a deposition an hour and a half away from his home in the middle of January while he was on pain killers. The Respondent Attorney McCarry wrote a letter several days before the deposition seeking punishment for the Petitioner's certain nonappearance. Did the District Court err when it awarded the costs incurred by Respondent Attorney Barbara Camens when she purchased a round-trip ticket from Washington, D.C. to Connecticut several weeks after she obtained the knowledge of

the Petitioner's nonappearance?

4) The Petitioner filed a lawsuit against two unions. The Petitioner was a member of both unions and in need of employment. The Respondents refused to hire the Petitioner as well as other disabled workers for federally funded projects. In addition, the Respondents may have violated the RICO statute, 28 U.S.C. § 1331. Yet, the District Court killed the lawsuit. Should the United States Supreme Court review a case of national importance as the rights of the disabled are trampled upon by organized labor as sanctioned by a District Court?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED..... i

TABLE OF AUTHORITIES..... v

STATUTES INVOLVED IN THIS CASE..... 1

STATEMENT OF THE CASE..... 4

REASONS FOR GRANTING THE WRIT..... 6

I. THE DISTRICT COURT SANCTIONED VIOLATIONS OF THE TEXT AND SPIRIT OF THE AMERICANS WITH DISABILITY ACT WHEN IT DISMISSED THE PETITIONER'S LAWSUIT..... 6

II. THE DECISIONS OF THE DISTRICT COURT COMBINED WITH THE PRO-UNION BACKGROUND OF THE UNITED STATES MAGISTRATE WHO HEARD THE CASE PIERCE AND REASONABLY QUESTIONED HIS IMPARTIALITY. AS A RESULT, HIS REMOVAL WAS NECESSARY TO PROVIDE THE PETITIONER WITH AN IMPARTIAL ADJUDICATOR..... 10

III. THE DISTRICT COURT ERRED WHEN IT GRANTED COSTS TO THE RESPONDENTS WHEN THE RESPONDENTS ESCALATED THE COSTS OF A DEPOSITION THAT THE PETITIONER GAVE ADVANCED NOTICE OF HIS PHYSICAL INABILITY TO ATTEND..... 12

IV. THE UNITED STATES SUPREME COURT SHOULD ALLOW THE PETITIONER'S CASE TO CONTINUE BECAUSE THE CASE INVOLVES ISSUES OF NATIONAL IMPORTANCE AFFECTING THE CONSTITUTIONAL RIGHTS OF PERSONS WITH DISABILITIES AND MEMBERS OF UNIONS..... 13

CONCLUSION..... 15

TABLE OF AUTHORITIES

Page

Cases

Alexander v. Choate, 469 U.S. 287, 295-97 (1985).9

United States v. Boch Oldsmobile Inc., 909 F.2d 605, 614 (1st. Cir. 1990).....14

United States v. Doe, 465 U.S. 605, 614 (1984)..15

Supreme Court Rules

Rule 10.....i

Federal Rules of Civil Procedure

Rule 26.....7

Rule 30.....7

Rule 30(b).....i

Rule 30(c)(4).....7

Rule 32(a)(3).....10

Constitution And Statutes

28 U.S.C. § 455(a).....i,10

28 U.S.C. § 1331.....iii,4,11

The Americans with Disabilities Act.....ii,4

28 CFR 35.102.....6

28 CFR 36.104.....6

TABLE OF AUTHORITIES - Continued

Page

28 CFR 35.130(b)(7).....7

28 CFR 36.302.....8

28 CFR 36.302(a).....8

28 CFR 36.303(a).....8

28 CFR 36.303(b).....8

Model Rules of Evidence

Rule 3.4(a).....10

STATUTES INVOLVED IN THIS CASE

Title VII, Civil Rights Act of 1964, Sec. 2000e-26-703(c).

Americans with Disability Act of 1990, 42 U.S.C. 12102, §§ 3602(n), 3604(c).

American with Disabilities Act, Title II, 28 CFR 35.149, 35.150, II-5. 1000, provides a standard known as "program accessibility" which applies to all existing facilities and services of a public entity:

> "A public entity may not deny the benefits of its programs, activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities."

Rehabilitation Act of 1973, 29 U.S.C. §§ 706-795(i).

Executive Order 12201.

Regulatory Flexibility Act.

29 CFR 1604.6 (Equal Protection under the law).

Federal Whistle Blower Act, U.S.C. §§2021-2024 (1988), as amended on March 18, 1991.

Civil Rights Act of 1866 (Equal Rights under the law).

29 CFR 1604.6(a) (Internal segregation within an agency is illegal and unlawful).

Federal Register § 36.104, Pg. 35594

provides:

"Place of Public Accommodations means a facility, operated by a private entity whose operations affects commerce and falls within one of the following categories:
...6) A Laundromat, dry-cleaning, bank, barber beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or **lawyer....**" (Emphasis added).

Federal Register § 36.201, Pg. 35595 provides:

"No individual shall be discriminated against on the basis of disability in the full and equal employment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodations by any private entity who owns, leases (or leases to) or operates a place with public accommodations."

Federal Register § 36.302, Pg. 35596 provides:

"A public accommodation shall make reasonable modification in policies, practice or procedures, when the modifications are necessary to afford goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities unless, the public accommodation can demonstrate that making the modification would fundamentally alter the nature of

goods, services, facilities, privileges or accommodations."

Federal Register § 36.303, Pg. 35597 provides:

"A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than any other individual because of the absence of Auxiliary Aids and Services." (also 28 CFR 39.103).

Federal Register § 36.305, Pg. 35596 provides:

"Where a public accommodation can demonstrate that barrier removal is not readily achievable, the public accommodation shall not fail to make goods, services, facilities, privileges or accommodation available through alternative methods is these methods are readily achievable:

a) Providing curb or home delivery;

b) Retrieving merchandise from inaccessible shelves or racks;

c) Relocating activities to accessible locations."

The Regulatory References to 28 CFR 35.106-35.164, Title II-7, 1000 provides:

"Equally effective Communications with individuals with disabilities are as effective as communications with others."

STATEMENT OF THE CASE

In June of 1992, this Honorable Court issued a decision which expressly granted the right of union members to sue their unions when these unions violate union by-laws. The Petitioner had several disabilities at the time.

The Petitioner's unions, Local 1719 and its International union, the Respondents, violated their by-laws. The Respondents refused to hire the Petitioner as well as other disabled workers for federally funded projects in violation of the Americans with Disabilities Act. In addition, the Respondents may have violated the RICO statute. The Petitioner brought suit against his unions in the United States District Court, District of Connecticut at Bridgeport.

The Petitioner is an immigrant house painter He is uneducated in the English language. As such, he is unfamiliar and unknowledgeable with the legal maneuvering and avoidance tactics practiced by the Respondents.

The District Court accepted the Petitioner's Complaint as valid.

On August 15, 1993, the Respondent's deposed the Petitioner in Bridgeport, Connecticut. The Petitioner gave the Respondent's an opportunity to ask as many questions as necessary. The Respondent Attorneys brought the four hundred pound General Representative of Local 1719 painter to the deposition. This painter physically and verbally abused and intimidated the Petitioner. The deposition lasted a short time as the Respondents and their bully attempted to scare the Petitioner to break his spirit.

The Petitioner pursued the case up to the discovery stage when a tragedy occurred.

On May 3, 1993, the Petitioner was involved in a serious accident. The Petitioner's injuries

were numerous and complicated. For example, both arms were severely injured. The injuries were so severe that the Petitioner's physician placed the Petitioner's left arm in a cast/splint on four different occasions. This physiciar prescribed 500 mg. of a pain killer, Naprosyn, to alleviate pain in conjunction with Diabeta, a medication to combat the Petitioner's diabetes.

The Petitioner, according to his physician orders, was completely incapacitated for eight months following the accident. From June of 1994 through December of 1995, the Petitioner underwent three major surgeries, all of which required general anesthesia.

Rather than reasonably accommodate the Petitioner, the Respondent's clogged the lower courts with unnecessary paperwork and motions. While the Petitioner was at home recuperating, representatives from the Respondent's trespassed on his property, barged into his mail box, and rearranged mail belonging to him.

In December of 1995, the Petitioner endured his third and most serious surgery of the year. Rather than allow the Petitioner to recuperate, the Respondents sought the death of his lawsuit and possible further injuries to the Petitioner. The Respondents sought to depose the Petitioner while his arm was in a heavy cast and while he ingested medication. The proposed site was illogical; it was an hour and a half away from the court the case was pending; an hour and a half further north from one of the Respondent attorneys, Barbara Camens, and an hour and half from the home of the Petitioner in the worst month of the New England winter.

In December 1995, the Respondents sent notice of the second deposition scheduled for January 26, 1996. The Petitioner immediately reminded the Respondents and the District Court that he was

under physician's care, under the influence of prescribed mind altering pain killers, recuperating from major surgery, unable to travel an hour and a half in winter, and in great pain.

The Petitioner filed motions to the District Court requesting a deposition :1) in the most reasonable location, 2) on another date so as the Petitioner could recuperate and so the weather could cooperate, and/or 3) with alternative means as provided by the Federal Rules of Civil Procedure.

Instead of mitigating damages, the Respondent Attorney Barbara Camens purchased a round-trip ticket from Washington, D.C. to Connecticut. Thus, the Respondents inflated the costs. In a letter dated January 26, 1995, Respondent Attorney David McCarry sent a letter to Judge Daly, Attorney McCarry admitted that the Petitioner gave ample notice of his nonappearance.

Nonetheless, United States Magistrate Thomas P. Smith, a card carrying member and supporter of a union, dismissed the suit and awarded the Respondents inflated legal fees in the amount of $2,344.

REASONS FOR GRANTING THE WRIT

I. THE DISTRICT COURT SANCTIONED VIOLATIONS OF THE TEXT AND SPIRIT OF THE AMERICANS WITH DISABILITIES ACT WHEN IT DISMISSED THE PETITIONER'S LAWSUIT

The Americans with Disabilities Act protects persons with disabilities. 28 CFR 35.102, Fed. Reg. No. 144, Pg. 35696 (7-26-91). Specifically, the Americans with Disabilities Act mandates that an attorney must provide reasonable accommodations when dealing with other people and when providing access to a law office. 28 CFR 36.104.

The protection of the Americans with Disabilities Act extends to access to and procedural rules of all federal courts. The ADA is an umbrella providing broad protection, when applied to the federal courts, which protects persons with disabilities from all services, programs, activities, and procedures of federal courts. 28 CFR 35.130(b)(7).

The Federal Rules of Civil Procedure authorize the District Court to provide reasonable accommodations on an individual basis, when cause is demonstrated. Rule 30(c)(4) specifically allows other means of taking a deposition. The Petitioner fully disclosed the nature of his disabilities to the District Court. The Petitioner underwent a deposition. The Respondents sought a second, unnecessary deposition after while the Petitioner recuperated from numerous traumatic injuries.

The Respondents, informed of the Petitioner's incapacities, decided to schedule the deposition an hour and a half away from the Petitioner's home in the middle of January in direct contrivance of Rule 30 of the Federal Rules of Civil Procedure. Rule 30 states that a deposition must take place wherever a suit is filed. The suit was pending in Bridgeport, the city where the Petitioner lived, not in Hartford, the site the Respondents scheduled the deposition.

The District Court also sanctioned a violation of Rule 26 of the Rules of Federal Civil Procedure which states that two parties of a suit **together** schedule a **mutually convenient** time and place for a deposition. The Respondents single-handedly, along with the District Court's approval, set the time and place of the deposition.

The timing of this second deposition, just a few weeks after the Petitioner underwent serious,

traumatic surgery, is extremely suspect. It seemed that the Respondents were "kicking a person while down." As such, the Petitioner, through motions, sought a postponement. When the District Court denied these motions, the Petitioner wrote a letter seeking reasonable accomodations directly to the judge assigned to the case.

Judge Daly was not faced with a dilemma of the proportion faced by Hamlet. Rather, the dilemma was easy: either postpone the deposition to the Spring (or provide an alternative means of deposition) or dismiss a lawsuit with serious ramifications to organized unions and to constitutional rights.

If the Petitioner were a person who was blind or hearing impaired, the attorneys for the union would have been obligated to accommodate his disabilities at a deposition by providing Auxiliary Aids and Services (e.g., interpreters, readers, etc.) so as to prevent discrimination based on a disability. 28 CFR 36.303(a) and (b). Further, the attorneys for the Respondents would have to remove architectural barriers or utilize reasonable alternatives in order to depose a litigant.

The Petitioner requested a reasonable modification of the Respondent attorneys to participate in the deposition in a manner consistent with the Petitioner's physical limitations in accordance with 28 CFR 36.302. In addition, the Petitioner pleaded with the District Court to provide an alternative form of deposition or at the least, a postponement to a latter date or relocation to a site closer to the Petitioner's home. The District Court refused.

In doing so, the District Court promoted discrimination in violation of 28 CFR 36.302(a). Often, discrimination against people with mental or physical disabilities is the product, not of

invidious animus, but rather of thoughtfulness and indifference of benign neglect; discrimination against the handicapped is primarily the result of apathetic attitudes rather than affirmative animus. Alexander v. Choate, 469 U.S. 287, 295-97 (1985).

The District Court dismissed the Petitioner's case because a sick and incapacitated senior citizen could not attend a deposition one and a half hours away from his home in the statistically worst month, in terms of driving condition, of the year. The District Court refused to order any reasonable accommodations.

The attorneys for the Respondents did not claim that a burdensome alteration would occur if the deposition took place in Bridgeport, where the Petitioner lived. The District Court, in effect, found that it would be more burdensome for able-bodied attorneys to travel an hour and a half than it would be for a handicapped person on medication to travel an hour and a half in the middle of winter.

The District Court abused its discretion by sanctioning the totally incapacitated Petitioner to a "suicide mission." The lower court gave the Respondents the "green light" to a corrupted union to continue to do as it pleases, to continue to rob its members and to continue to denigrate the spirit of the American with Disabilities Act, not to mention the United States Constitution.

II. THE DECISIONS OF THE DISTRICT COURT COMBINED WITH THE PRO-UNION BACKGROUND OF THE UNITED STATES MAGISTRATE WHO HEARD THE CASE PIERCE AND REASONABLY QUESTIONED HIS IMPARTIALITY. AS A RESULT, HIS REMOVAL WAS NECESSARY TO PROVIDE THE PETITIONER WITH AN IMPARTIAL ADJUDICATOR

According to 28 U.S.C. § 455(a), a judge or magistrate must disqualify himself or herself in any proceeding in which his or her impartiality may reasonably be questioned. Likewise, the Rules of Judicial Conduct mandate that a judge must step down at the "appearance" of bias or prejudice. Otherwise, a judge or magistrate commits error when he or she continues to sit on a case. The standard for removal is the "appearance" or "questioning" of bias, prejudice, or impartiality.

It is clear from the record that the District Court judge and United States Magistrate Thomas P. Smith should have removed themselves. According to the record, United States Magistrate Thomas P. Smith failed the standard. This conclusion is reached by looking at his decisions and background, both of which are pro-union.

The decisions reached by the District Court over the course of the suit clearly exhibit pro-union favoritism. For example, failed to adhere to Rule 32(a)(3) of the Rules of Federal Civil Procedure when he dismissed the lawsuit. This rule seeks to protect the dismissal of a suit when "exceptional circumstances" and "hardship," like an accident or disabilities arise.

In addition, the appearance of animus occurred when Magistrate Thomas P. Smith sanctioned a violation by the Respondents of Rule 3.4(a) of the Model Rules of Evidence. This rule provides that a lawyer may not unlawfully obstruct another party's access of evidence or alter,

destroy or conceal a document or material having potential evidentiary value. At the first deposition of the Petitioner, the Petitioner gave the Respondents originals of documents which they had requested. The Respondents did not return all of these documents. Magistrate Thomas P. Smith failed to sanction the Respondents despite the Petitioner's pleas; instead, Magistrate Smith did nothing.

Another pro-union motivated decision resulted in the District Court striking out a portion of the Petitioner's complaint. The Petitioner had evidence which indicated that the Respondents violated 28 U.S.C. § 1331, the so called "RICO" statute. This evidence would have brought to light to the public that the Respondents had histories of misrepresenting their members, histories of corruption, histories of illegal collusion with contractors, and histories of possible organized crime ties. Magistrate Thomas P. Smith prevented this evidence from coming to light by striking the portion from the Complaint.

Not only were his decisions suspect, but Magistrate Thomas P. Smith's background also indicated union-favoritism. He was an admitted card-carrying member of a union. He did not disavow any union favoritism. Combined with the biased rulings, Magistrate Smith failed the standard; his impartiality went beyond the mere appearance of impartiality. It appeared both real and unreasonable

III. THE DISTRICT COURT ERRED WHEN IT GRANTED COSTS TO THE RESPONDENTS AFTER THE RESPONDENTS ESCALATED THE COSTS OF A DEPOSITION THAT THE PETITIONER GAVE ADVANCED NOTICE OF HIS PHYSICAL INABILITY TO ATTEND

It is well established that a court may impose costs "reasonably" incurred by a party against the other. A court may not force a party to be responsible for the unreasonable costs of the opposing party.

The Respondents deposed the Petitioner on August 15, 1993 in Bridgeport, the city the Petitioner resided in. Even though the petitioner's left arm was in a cast, he answered all questions the Respondents asked. In December of 1995, the Petitioner underwent a serious surgical procedure. The Respondents sought to depose the Petitioner a few weeks later on January 26, 1996.

In December of 1995, the Petitioner gave advance notice that he would not be able to attend the deposition. The Petitioner filed motions notifying the District Court that he was physically unable to attend the deposition as scheduled unless reasonable accommodations were made.

The District Court denied these motions before the scheduled date of deposition. As soon as the Petitioner received notice of the District Courts denial, the Petitioner contacted Respondent Attorney David McCarry and reminded him once again that the Petitioner would not be physically able to attend the deposition. The Petitioner, as he did weeks before, instructed the Respondent to call the court reporter and the other attorneys so as no unnecessary costs would be incurred.

Possibly smelling blood and money, the Respondent Attorney David McCarry failed to cancel

or reschedule the deposition. Instead, he ordered that attorney Barbara Cemens purchase a round-trip plane ticket from Washington, D.C. to Connecticut, and that she take a taxi to and from the airport. In an attempt to inflate the costs more, Respondent Attorney David McCarry ordered the court reporter to arrive anyway. The alleged costs were $2,344. The impression is obvious: two rich unions gave one of their high-priced attorneys a vacation to Connecticut on the tab of a disabled, senior citizen, laborer. And worse, Magistrate Smith sanctioned this.

Judge Daly awarded costs in the amount of $2,344, the amount Attorney McCarry submitted for the deposition. These costs are unreasonable. The Petitioner gave the Respondents several weeks notice that he would not attend the deposition as scheduled. Yet, a high-priced attorney flew to Connecticut and then back to Washington, D.C. What could possibly be "reasonable" about that?

IV. THE UNITED STATES SUPREME COURT SHOULD ALLOW THE PETITIONER'S CASE TO CONTINUE BECAUSE THE CASE INVOLVES ISSUES OF NATIONAL IMPORTANCE AFFECTING THE CONSTITUTIONAL RIGHTS OF PERSONS WITH DISABILITIES AND MEMBERS OF UNIONS

On June 12, 1992, the Petitioner filed his lawsuit against the Respondents, the Petitioner's local union and international union. These two labor organizations deprived the Petitioner of employment and various constitutional rights. The amount of relief the Petitioner sought was $2,000,000.

Local 1719 enforced an "out-of-work" list also known as an "unemployed" list. The Petitioner had evidence that Local 1719 constantly placed the Petitioner's name on the "out-of-work" list.

Further evidence indicates that this union had almost full employment as work was plentiful. A majority of the work involved state and federal contracts.

State and federal law requires that unions ensure that government funded projects include the hiring of people with disabilities. Rather than follow the law, Local 1719 failed to hire the legal proportionate number of people with disabilities. In addition, the Respondents failed to ensure reasonable accommodations as required by the Americans with Disabilities Act. Instead, the members of the board of Local 1719 gave the work to their friends who worked below union scale. The disabled and other union members remained starving on the "out-of-work" list.

At this time, the Petitioner paid his full union dues and assessments.

Section 10(1) of Local 1719's By-Laws state that "any job placement will be through the Business Representative." Section 211 of International Union's Constitution states that

> "out of town painting contractors performing work in the jurisdiction of painter Local 1719 will employ 75 percent from the local residents and 25 percent from the contractors home office."

Evidence clearly shows that Local 1719 and the International allowed out of town contractors to complete massive projects, funded by the Department of Housing and Urban Development and other federal agencies, without hiring persons with disabilities and without making reasonable accommodations Instead of following the law, the Business Representative hired his able-bodied friends, many of whom worked below union scale wages.

The Court of Appeals, Second Circuit, denied

the Petitioner's appeal. In addition, the appeals court denied the Petitioner's Petition for Rehearing.

It is well established that the Supreme Court will not grant certiorari to "review evidence and discuss specific facts." United States v. Doe, 465 U.S. 605, 614 (1984). The Supreme Court can accept a petition for Writ of Certiorari when the case presents extraordinary circumstances. U.S. v. Boch Oldsmobile Inc., 909 F.2d 657, 660 (1st Cir. 1990). In addition, the Supreme Court can reverse the final judgments of a lower courts when a manifest abuse of discretion occurs. Id. The errors committed by the lower courts and the issues of this suit concern issues of national importance. The rights of the disabled and handicapped Americans have been violated. This Honorable United States Supreme Court can stop this.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Apostolos Tsimbidaros

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TABLE OF CONTENTS OF APPENDIX

Page

U.S. DISTRICT COURT JUDGMENT..... App. 2

U.S. DISTRICT COURT ENDORSEMENT OF ORDER.. App. 3

U.S. COURT OF APPEALS, SECOND CIRCUIT SUMMARY ORDER..... App. 4

U.S. COURT OF APPEALS, SECOND CIRCUIT, DENIAL OF PETITION FOR REHEARING..... App. 8

****SOCIAL SECURITY ADMINISTRATION, RETIREMENT SURVIVORS AND DISABILITY INSURANCE DETERMINATION ..... App. 9

****BROTHERHOOD OF PAINTERS PENSION FUND, DISABILITY DETERMINATION..... App.11

****These items prove that the Respondents and the Respondents Attorneys were fully aware and informed that the Petitioner was a person with severe disabilities prior to his May 3, 1993 accident.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

APOSTOLOS TSIMBIDAROS	:	
v.	:	CASE NO. 5:92CV-345(AWT)
INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, ET AL	:	

JUDGMENT

This action having come on for consideration of the defendants' joint motion to dismiss before the Honorable Thomas P. Smith, United States Magistrate Judge, and the Honorable Alvin W. Thompson, United States District Judge and,

The Honorable Thomas P. Smith having considered the motion and the full record of the case including applicable principles of law, and having filed a Recommended Ruling on Defendants' Joint Motion for Dismissal With Prejudice granting the motion and the Court having Accepted it on September 7, 1995, it is hereby

ORDERED, ADJUDGED and DECREED that the judgment be and is hereby entered in favor of the defendants and costs and attorneys' fees are awarded to the defendants in the amount of $2,344.00.

Dated at Hartford, Connecticut, this 15th day of September, 1995.

KEVIN F. ROWE, Clerk

By_____
Robin D. Tabora

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

APOSTOLOS TSIMBIDAROS	:	
v.	:	CASE NO. 5:92CV-345(AWT)
INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, ET AL	:	

ENDORSEMENT ORDER

Upon review and pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 2 of the Local Rules for United States Magistrate (D.Conn.), Magistrate Judge Smith's Recommended Ruling on Defendant's Joint Motion for Dismissal with Prejudice [Doc. #220] is ACCEPTED.

SO ORDERED.

Dated at Hartford, Connecticut, this 7th day of September, 1995.

Alvin W. Thompson
U.S. District Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APOSTOLOS TSIMBIDAROS,
Plaintiff-Appellant

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, PAINTERS LOCAL UNION 1719;
PAUL CHROMANSKI, Business Manager;
MARK ARMENTANO; President;
INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES,
Defendants-Appellees

No. 95-9040

SUMMARY ORDER

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut (Thompson, D.J.), and was argued by the appellant and submitted by the appellees.

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of said district court be and it hereby is AFFIRMED.

Plaintiff-appellant Apostolos Tsimbidaros, who is proceeding pro se, appeals from a judgment of the district court dismissing his complaint with prejudice pursuant to Fed. R. Civ. P. 37(b)(2)(C), as a sanction for his failure to comply with discovery orders. Tsimbidaros brought this action for damages against International Brotherhood of Painters and Allied Trades and the

Painters Local Union 1719.[1] Plaintiff's second amended complaint alleges, inter alia, that the defendants violated their bylaws by 1) intentionally keeping Tsimbidaros on the "unemployed list" and giving work which was due him to other union members, and 2) allowing out-of-state contractors to complete jobs without hiring the requisite percentage of local workers.

At the outset of Tsimbidaros's first deposition, held on August 19, 1993, Tsimbidaros testified that he was under the influence of certain medication, and consequently would not be bound by his testimony. On September 16, 1993, defendants filed no responses or objections to their requests for interrogatories to clarify the claims in his complaint, had responded only in part to their requests for production of documents, and had refused to be deposed.

On October 12, 1993, the district court ordered Tsimbidaros to respond, within twenty days, both to defendants' interrogatories and to their request for documents, and to submit to a deposition within thirty days thereafter. The district court also specifically advised that "the continued violation of his discovery obligations will result in the imposition of sanctions, including attorneys' fees and/or dismissal with prejudice of this lawsuit." On January 10, 1994, Tsimbidaros complied by answering the defendants' interrogatories. In late 1994, twice moved for a stay to surgery.

On January 26, 1995, Tsimbidaros failed to attend his second deposition without notifying the defendants, despite the fact that the defendants' letter advising him of the time and place

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[1] Tsimbidaros's original complaint included three individual defendants who were not included in the amended complaint.

instructed him to provide advance written notice if he was unable to attend. On February 3, 1995, the defendants filed a joint motion to dismiss Tsimbidaros' complaint with prejudice pursuant to Fed. R. Civ. P. 37(b)(2)(C). On April 7, 1995, the magistrate judge found that, despite the court's several warnings, Tsimbidaros had refused to comply with discovery orders, delaying his case for nearly eighteen months. Accepting the recommendation of the magistrate judge, the district court granted the defendants' motion and awarded the defendants attorneys' fees in the amount of $2,344. On October 5, 1995, Tsimbidaros timely filed a notice of appeal.

A district court's decision to dismiss an action for failure to comply with discovery orders will be reversed only if the decision is an abuse of discretion. John B. Hull, Inc. v. Waterbury Petroleum Prods., Inc., 845 F.2d 1172, 1176 (2d Cir. 1988). the imposition of sanctions pursuant to Fed. R. Civ. P. 37 is within the broad discretion of the district court. Minotti v. Lensink, 895 F.2d 100, 102 (2d Cir. 1990). Dismissal with prejudice is a harsh remedy that should be used only where the court finds willfulness, bad faith, or fault by the prospective deponent. Valentine v. Museum of Modern Art, 29 F.3d 47, 49-50 (2d Cir. 1994) (citing Bobal v. Rensselear Polytechnic Institute, 916 F.2d 759, 764 (2d Cir. 1990), cert. denied, 499 U.S. 943 (1991). Nonetheless, this severe sanction may be imposed even on a pro se plaintiff where the litigant adequately has been warned that noncompliance may result in dismissal. Id. at 50.

Because the district court adequately warned Tsimbidaros of the possible consequences of noncompliance with the discovery orders, the district court did not abuse its discretion.

Tsimbidaros' contention that the surgeries performed on his arm may have prevented him from complying with the magistrate judge's deadlines for responding to interrogatories and requests for documents is unavailing, as both of the surgeries took place after the deadlines had expired. Moreover, although Tsimbidaros appeared at his first deposition, he rendered it a meaningless exercise by stating that his medication rendered him incapacitated. Second, Tsimbidaros failed to show up at the second deposition without notice, and he has failed to offer credible reasons either for his failure to appear or for his failure to give notice.

The award of damages was also not an abuse of discretion. Rule 37(b)(2) requires "the party failing to obey the order...to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that the circumstances make the award of expenses unjust." In this case, Tsimbidaros has not shown that he is indigent or put forth any other reason which would make awarding expenses unjust.

For the reasons set forth above, the judgment of the district court is hereby AFFIRMED.

Hon. James L. Oakes, U.S.C.J.

Hon. Frank X. Altimari, U.S.C.J.

Hon. John M. Walker, Jr., U.S.C.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the fifteenth day of August one thousand nine hundred and ninety-six.

Present:

Hon. James L. Oakes
Hon. Francis X. Altimari
Hon. John M. Walker, Jr.

TSIMBIDAROS

Appellant

v.

IBP LOCAL 1719

Appellee

A petition for rehearing having been filed herein by Apostolos Tsimbidaros.

Upon consideration thereof, it is

Ordered that said petition be and it hereby is **DENIED.**

GEORGE LANGE III, Clerk

By_____
Kathleen Brouwer
Operations Manager

Social Security Administration
Retirement, Survivors and Disability Insurance
Notice of Award

C93096

Northeastern Program Service Center
155-10 Jamaica Avenue
Jamaica, New York 11432-3830

APOSTOLOS TSIMBIDAROS
72 WHITTIER ST
BRIDGEPORT CT 06605

Date: April 11, 1993
Claim Number: 045-50-9044 HA

We are writing to let you know that you are entitled to monthly disability benefits from Social Security beginning January 1992.

The amount of your first check is $ 9556.00.

Shortly after April 06, 1993, you will receive your first payment which will include all benefits due you through March 1993. A payment for $651.00 will be sent on or about May 03, 1993. After that, a payment for $651.00 will be sent each month.

The following chart shows your benefit amount(s) before any deductions or rounding. The amount you actually receive may differ from your full benefit amount. When we figure how much to pay you, we must deduct certain amounts, such as Medicare premiums and worker's compensation offset. We must also round down to the nearest dollar.

Beginning Date	Benefit Amount	Reason
January 1992	$ 632.30	Entitlement began
December 1992	$ 651.20	Cost-of-Living adjustment

Doctors and other trained staff decided that you are disabled under our rules. But, this decision must be reviewed at least once every 3 years. We will send you a letter before we start the review. Based on that review, your benefits will continue if you are still disabled, but will end if you are no longer disabled.

The benefit described in this letter is the only one you can receive from Social Security. If you think you may qualify for another kind of Social Security benefit in the future, you will have to file another application.

The decisions we made on your claim are based on information you gave us. If this information changes, it could affect your benefits. For this reason, it is important that you report changes to us right away.

We have enclosed a pamphlet, "When You Get Social Security Disability

SSA-L30
C

Benefits...What You Need To Know." It will tell you what must be reported and how to report. Please be sure to read the parts of the pamphlet which explain what to do if you go to work or if your health improves.

If you think we are wrong, you have the right to appeal. A person who did not make the first decision will decide your case. We will correct any mistakes. We will review those parts of the decision which you believe are wrong and will look at any new facts you have. We may also review those parts which you believe are correct and may make them unfavorable or less favorable to you.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter.
- You must have a good reason if you wait more than 60 days to ask for an appeal.

You can have a friend, lawyer or someone else help you. There are groups that can help you find a lawyer or give you free legal services if you qualify. There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

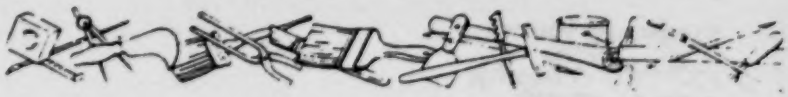
If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it. And if you hire a lawyer, we will withhold up to 25 percent of any past due benefits to pay toward the fee.

If you have any questions, you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-203-365-8457. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at:

DISTRICT OFF DOWNTOWN
3RD FLOOR
3885 MAIN STREET
BRIDGEPORT, CT 06606

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES
UNION AND INDUSTRY PENSION FUND

1750 NEW YORK AVE., N.W., SUITE 501 UNITED UNIONS BUILDING, WASHINGTON, D.C. 20006-5387
PHONE 202-783-4884 FAX NUMBER 202-393-6475



September 20, 1993

Mr. Paul Tsimbidaros
72 Whittier Street
Bridgeport, CT 06605

Applicant No. 19,928

Dear Mr. Tsimbidaros:

On behalf of the Trustees of the International Brotherhood of Painters and Allied Trades Union and Industry Pension Fund, we are pleased to inform you that your application for a pension has been considered, and that you are entitled to a single life pension amount of $421.50 under the Disability Pension, effective January 1, 1992.

However, you elected that benefits be paid under the terms of the Husband-and-Wife Pension. The attached election form sets out the two payment forms under which this benefit can be paid.

To begin receiving your monthly pension, you must sign and return the following:

1) Husband-and-Wife Payment Election Form - Place a check mark in the box provided, designating the payment option under which benefits are to be paid.

2) Retirement Declaration - Sign one copy and return it to the Fund and the other copy you should keep for future reference.

3) Pensioner's Signature Card - Sign this card exactly as you intend to endorse each pension check.

Return all three items in the self-addressed envelope provided.

Remember, you must personally sign each of your pension checks, and be sure to notify the Fund Office, in writing, of any change in address or if you return to employment.

**** NOTE - Any employment after the above date will not be counted for purposes of re-determining your pension amount. However, if you have had employment after the above date and you do wish those hours to be taken into consideration, please notify this office immediately. ONCE YOUR PENSION CHECKS HAVE BEGUN, YOUR PENSION AMOUNT CANNOT BE RE-DETERMINED.****

We join with the Trustees in extending our best wishes to you during your retirement years ahead.

Sincerely yours,

GARY J. MEYERS
Administrator

GJM:llm
opeiu #2
afl-cio

Enclosures

No. 96-873

Supreme Court, U.S.
FILED
JAN 23 1997
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

APOSTOLOS TSIMBIDAROS,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO, CLC and PAINTERS LOCAL UNION 1719,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the District Court abuse its discretion in dismissing petitioner's complaint as a Rule 37 discovery sanction, where petitioner had: terminated an initial attempt to depose him by claiming to be incapacitated by medication; defied several discovery orders requiring responses to written discovery and submission to deposition; ignored repeated court warnings that continued noncooperation may result in dismissal; and wilfully failed to appear at a second deposition, without credible excuse and without advance notice to counsel?

2. Should the District Court Judge and Magistrate Judge be disqualified on grounds of bias based on an unsubstantiated assertion that the Magistrate is a union member and supporter, and based on judicial rulings which are consistent with governing precedent?

3. Did the District Court err in awarding reasonable expenses to respondents where, without advance notice to counsel, petitioner wilfully failed to attend his second deposition, given the court's prior warnings that sanctions, including attorneys' fees, would result from such noncooperation?

4. Should the lower court's Rule 37 dismissal sanction be reversed on grounds that petitioner's lawsuit allegedly presents issues of "national importance," where no abuse of discretion may be found?

LIST OF PARTIES TO THE PROCEEDING

The petitioner is Apostolos Tsimbidaros, plaintiff and appellant below.

The respondents, defendants and appellees below, are correctly identified in the caption except that International Brotherhood of Painters and Allied Trades should be International Brotherhood of Painters and Allied Trades, AFL-CIO, CLC.

Both respondents join in this brief in opposition.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
COUNTERSTATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	6
I. PETITIONER NEITHER ARGUED BELOW THAT COURT OR COUNSEL VIOLATED THE AMERICANS WITH DISABILITIES ACT, OR PRESENTED FACTS TO SUPPORT THIS CLAIM	6
II. PETITIONER HAS FAILED TO RAISE PROPER GROUNDS FOR RECUSAL UNDER SECTION 455(a)	10
III. THE COURT DID NOT ABUSE ITS DISCRETION IN AWARDING FEES AND COSTS AGAINST PETITIONER	12
IV. GIVEN THAT THE RULE 37 DISCOVERY SANCTION WAS NOT AN ABUSE OF DISCRETION, THE ALLEGED IMPORTANCE OF PETITIONER'S UNDERLYING CASE CANNOT JUSTIFY A REEXAMINATION OF THE LOWER COURT'S DISMISSAL ORDER	13
CONCLUSION	15

TABLE OF AUTHORITIES

CASES — Page

Bobal v. Rensellaer Polytechnic Institute, 916 F.2d 759 (2d Cir. 1990), *cert. denied*, 499 U.S. 943 (1991) 13, 14
Brody v. President & Fellows of Harvard College, 664 F.2d 10 (1st Cir. 1981), *cert. denied*, 455 U.S. 1027 (1982) 10
Cort v. Ash, 422 U.S. 66 (1975) 7
Goodman v. Lukens Steel Company, 482 U.S. 656 (1987) 8, 13
Graver Mfg. Co. v. Linde Co., 336 U.S. 271 (1949) 8, 13
International Brotherhood of Electrical Workers v. Foust, 442 U.S. 42 (1979) 8, 13
Lawn v. United States, 355 U.S. 339 (1958) 7, 8
Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1987) 10
Liteky v. United States, 510 U.S. 540 (1994) 10, 11, 12
Maier v. Orr, 758 F.2d 1578 (Fed. Cir. 1985) 10
Minotti v. Lensink, 895 F.2d 100 (2d Cir. 1990) 13, 14
National Auto Brokers Corp. v. General Motors Corp., 572 F.2d 953 (2d Cir. 1978), *cert. denied*, 439 U.S. 1072 (1979) 10
National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976) 6, 12, 13, 14
New Haven Inclusion Cases, 399 U.S. 392 (1970) 7, 8
Parrish v. Bd. of Comm'rs of Alabama State Bar, 524 F.2d 98 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976) 10
Sierra Club v. Simkins Industries, Inc., 847 F.2d 1109 (4th Cir. 1987) 10
United States v. Ceccolini, 435 U.S. 268 (1978) 8, 13
United States v. Ortiz, 422 U.S. 891 (1975) 7
Valentine v. Museum of Modern Art, 29 F.3d 47 (2d Cir. 1994) 13, 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

No. 96-873

APOSTOLOS TSIMBIDAROS,
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AFL-CIO, CLC and PAINTERS LOCAL UNION 1719,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

Respondents respectfully oppose the petition for writ of certiorari as it relies on evidentiary matters and legal claims which were never presented to the District Court or to the Second Circuit Court of Appeals.

Petitioner, as *pro se* plaintiff, filed his lawsuit on June 12, 1992. It alleged, in essence, that as labor organizations in which petitioner was then a member, respondents had breached their contractual obligations by failing to refer him to work on construction projects in accordance with the governing union constitution and by-laws. Petitioner did not plead a cause of action under the Americans With Disabilities Act ["ADA"].

Discovery was critical, as petitioner's complaint was extremely vague as to respondents' alleged misconduct. As District Court Judge Daly noted after the first year of litigation, the complaint was "a hodge-podge of allegations, and the defendants have labored to glean the possible legal foundations supporting the plaintiff's claims." Ruling on Defendants' Motion to Dismiss, March 29, 1993.

Petitioner failed utterly to satisfy his discovery obligations. Despite numerous orders compelling discovery, petitioner repeatedly failed to provide timely responses to interrogatories and requests for production. Written discovery served in August 1993 was not properly responded to by petitioner until January 10, 1995. (Respondents' Appendix at 13-14).

Petitioner also persistently refused to cooperate in deposition. Respondents' first attempt to depose petitioner in August 1993 was frustrated by petitioner's interruption of the first question posed to read from a prepared written statement that he could not be bound by his testimony, given the effect of medication taken earlier that day. (Petitioner's Appendix at 5; Respondents' Appendix at 13). Petitioner had given no prior notice to counsel that he would be "unable" to testify. Counsel for the respondent International incurred substantial expense in needlessly traveling to Bridgeport, Connecticut from Washington, D.C.

Respondents filed a motion for sanctions. In one of its rulings of October 12, 1993, the Court warned petitioner that:

> irrespective of the ultimate disposition of this motion, continued violation of his discovery obligations will result in the imposition of sanctions, including attorneys' fees and/or the dismissal with prejudice of this lawsuit.

(Petitioner's Appendix at 5; Respondents' Appendix at 1).

The Court issued several other discovery rulings on October 12, 1993. Denying petitioner's motion to quash future attempts to depose him, the Court ordered petitioner to attend his renoticed deposition and specifically warned him that "failure to attend his deposition may result in the imposition of drastic sanctions, including dismissal of this lawsuit with prejudice." (Respondents' Appendix at 3 & 13).[1] The Court also granted respondents' motion to compel, ordering responses to interrogatories and requests for production by November 2, 1993 and granting respondents thirty days post-compliance to take petitioner's deposition. (Petitioner's Appendix at 5; Respondents' Appendix at 4-5, 7 & 13).

Petitioner failed to comply with the court order requiring discovery responses by November 2, 1993. Respondents therefore moved for a dismissal sanction, which motion the Court denied without prejudice on December 8, 1993. (December 8, 1993 Ruling of Magistrate Judge, affirmed by District Court on January 4, 1994).

Petitioner thereafter continued to defy the court's discovery orders. As of Spring, 1994, respondents again sought a Rule 37 dismissal sanction. On July 5, 1994, the Court again declined to dismiss this action, citing petitioner's *pro se* status. (Respondents' Appendix at 10). Observing that "given plaintiff's complete lack of cooperation in discovery, resort to the court's intervention is all the defendants have left" (Respondents' Appendix at 9), the Court again ordered that petitioner submit complete discovery responses within twenty days (i.e., by July 25, 1994). The Court reaffirmed that respondents would be granted thirty days post-compliance to depose petitioner. Importantly, the Court warned:

> The Court is mindful that the terms of this Order are virtually identical to the terms of the October [1993]

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[1] That Order further endorsed noticing petitioner's deposition at the offices of the local union's counsel in East Hartford, Connecticut. (Respondents' Appendix at 2).

> Order. . . . The plaintiff is cautioned that his failure to obey this or any other Order of this court or any further manifestation of a continued failure to cooperate in discovery will result in this case being dismissed with prejudice.

(Respondents' Appendix at 11 & 13-14).

In defiance of this court order, petitioner failed to comply with respondents' interrogatories and requests for production by July 25, 1994. In the face of persistent demands and efforts to facilitate compliance on the part of respondents, petitioner ultimately complied on January 10, 1995. (Respondents' Appendix at 14).

By the express terms of the Court's prior orders, respondents were obligated to depose petitioner by no later than February 9, 1995, or risk the close of discovery. Respondents sent petitioner a notice of deposition on the same day his final compliance was received, scheduling the deposition for January 26, 1995. Attached to the deposition notice was a letter specifically instructing petitioner to provide advance written notice if, for any reason, he was unable to attend. (Respondents' Appendix at 14).

On January 17, 1995, petitioner filed motions requesting deposition by telephone or by written question. He did not, however, file a motion to quash or for extension of time. (Respondents' Appendix at 14). Respondents' counsel received service copies of these motions on January 18th. Otherwise petitioner never communicated with respondents concerning his plans for attendance at deposition. At no time did he notify respondents that he would not attend.[2]

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[2] As an example of factual issues which are raised here for the first time, petitioner states that he contacted respondents' counsel prior to the date of his deposition and instructed them to cancel it. (Petition at 12). Not only is this assertion false, but petitioner never before disputed that he failed to provide advance notice of

By Federal Express overnight delivery, respondents sent petitioner a letter on January 18, 1995, together with their service copies of objections to his motions. Petitioner was reminded that respondents had been ordered by the Court to take his deposition within thirty days of his compliance with written discovery. Respondents informed petitioner that he was still expected to attend his deposition. Based on their prior experience with him, respondents advised petitioner that, if he intended to claim a medical excuse for non-attendance, he should file an emergency motion for extension of the time for discovery. Respondents assured petitioner that they would not oppose such a motion—if he provided appropriate medical documentation from a physician to demonstrate an inability to travel and to attend his deposition. Finally, respondents reiterated their demand that, if petitioner intended not to attend, he provide advance written notice to counsel.

Petitioner failed to attend this deposition noticed for January 26, 1995. He failed to provide advance notice to counsel of his non-attendance. As in August 1993, counsel for the International Union traveled needlessly to Connecticut from Washington, D.C., and respondents incurred $2,344.00 in unnecessary expenses.

On respondents' motion for discovery sanctions, Magistrate Judge Thomas Smith issued a recommended ruling on April 7, 1995, dismissing petitioner's lawsuit with prejudice pursuant to Rule 37 of the Federal Rules of Civil Procedure. In so doing, the Magistrate Judge found that petitioner had provided no legitimate excuse, such as proof of a medical disability, for his nonattendance at deposition, and that petitioner had knowingly and wilfully disobeyed a court order compelling him to attend. The Magistrate noted that he had repeatedly warned petitioner

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his nonattendance, either in writing or by telephone. Both the District Court and the Second Circuit Court of Appeals found that petitioner failed to provide such notice. (Petitioner's Appendix at 5-6 & 7; Respondents' Appendix at 14 & 15-16).

through successive court orders that his case would be dismissed with prejudice if he refused to comply with discovery. On that factual record, the Magistrate ordered a Rule 37 dismissal and further ordered an award of reasonable fees and costs of $2,344.00 against petitioner. (Respondents' Appendix at 15-17).

Upon petitioner's request for review, the District Court endorsed the Recommended Ruling on September 7, 1995. (Petitioner's Appendix at 3). The Second Circuit Court of Appeals denied petitioner's appeal on June 25, 1996. (Petitioner's Appendix at 4-7). The appellate court further denied petitioner's request for rehearing on August 15, 1996. (Petitioner's Appendix at 8).

REASONS FOR DENYING THE WRIT

The dismissal of petitioner's lawsuit as a Rule 37 sanction for noncooperation in discovery cannot be disturbed unless the District Court abused its discretion. *National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976). Given the numerous warnings that were given and petitioner's willful failure to obey the court's orders, no abuse occurred. The petition for certiorari is founded on evidentiary matters and claims of law which were not presented below. The writ must therefore be denied.

I. PETITIONER NEITHER ARGUED BELOW THAT COURT OR COUNSEL VIOLATED THE AMERICANS WITH DISABILITIES ACT, NOR PRESENTED FACTS TO SUPPORT THIS CLAIM.

Petitioner argues that both the lower courts and respondents' counsel violated the ADA by failing to make reasonable accommodations for an alleged disability in scheduling his deposition. (Petition at 6-9). This legal argument is wholly new, never having been raised to the District Court or to the Second Circuit.[3] Absent extraordi-

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[3] Petitioner's many papers to the court mentioned the ADA in a different context on several occasions. Amongst his countless

nary circumstances, this Court wisely refuses to consider both legal questions and factual assertions that were not presented to the courts below. *United States v. Ortiz*, 422 U.S. 891, 898 (1975) (refusal to consider legal claims first raised in petition for certiorari); *accord, Cort v. Ash*, 422 U.S. 66, 72 n.6 (1975); *New Haven Inclusion Cases*, 399 U.S. 392, 450 n.66 (1970) (refusal to consider new facts); *accord, Lawn v. United States*, 355 U.S. 339, 354 (1958). Petitioner's newly-raised legal argument therefore should not be considered.

The facts upon which petitioner's new ADA argument is based are also newly-raised in this Court. Indeed, throughout the proceedings below, petitioner adamantly refused to provide evidence in support of his allegations of disability, despite persistent demands and discovery requests from respondents. His first and only effort to provide evidence of disability is his inclusion of a Social Security Notice of Award at page nine of the Appendix to his Petition for Certiorari.

As Magistrate Judge Smith noted in his ruling recommending dismissal of petitioner's complaint:

> If the plaintiff is attempting to claim a medical excuse as his reason for failing to appear at the scheduled deposition, he has provided the court with absolutely no proof.

(Respondents' Appendix at 16). This essential factual ruling was adopted by the District Court and was affirmed by the Second Circuit.

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accusations, he contended that the defendants had violated the ADA in failing to refer him to work on construction sites. These asides were irrelevant as petitioner's complaint was based solely on the alleged violation of the union constitution and by-laws. He did not plead a cause of action under the ADA. Nor could he have amended his complaint, as the statute of limitations had expired before the first occasion on which petitioner mentioned the ADA.

As petitioner's newly-proffered evidence of disability was not made a part of the record below, this Court should refuse to consider it. *New Haven Inclusion, supra*; *Lawn v. United States, supra.* It should instead defer to the two lower courts' findings that petitioner had provided no credible, legitimate reason for his nonattendance at deposition. *Goodman v. Lukens Steel Company*, 482 U.S. 656, 665 (1987) (no review of "concurrent findings of fact by two courts below in the absence of very obvious and exceptional showing of error."); *International Brotherhood of Electrical Workers v. Foust*, 442 U.S. 42, 46 n.7 (1979); *United States v. Ceccolini*, 435 U.S. 268, 273 (1978), *citing Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949).

Even if this Court were inclined to consider petitioner's newly-produced document, the document itself fails to support petitioner's position that he should be excused from his noticed deposition. At best, the Award proves that petitioner is disabled from working on a regular and substantial basis. It does not prove that he cannot attend a deposition and give testimony, or that he should be excused from nonattendance without notice.

There are additional reasons why petitioner's ADA claim must fail. First, petitioner has misread Rule 30 of the Federal Rules of Civil Procedure throughout this litigation to state that his deposition had to be held at the location of the District Court in which his lawsuit was pending; i.e., in Bridgeport, CT. (Petition at 7). Petitioner resides in Bridgeport. The Rules merely limit the reach of a subpoena when the deponent resides outside the district in which an action is pending. The petitioner's January 26, 1995 deposition was to be held in East Hartford, CT, which is in the same district as Bridgeport. Thus, the lower courts did not condone a breach of Rule 30.

Second, petitioner fails to acknowledge that depositions are customarily taken in the deposing attorney's office.

The District Court agreed, and explicitly held that under the circumstances of the case, "It is not at all unreasonable that the deposition which the defendants seek to take be conducted in the office of defendants' attorney. . . ." (Respondent's Appendix at 2 & 13). Petitioner never moved for reconsideration of this order.

Third, petitioner makes reference to January as the "statistically worst month of the year", deceptively implying that travel conditions were adverse on January 26, 1996. (Petition at 9). In fact, plaintiff did not present, and could not have presented evidence below to demonstrate that weather played a legitimate role in his failure to attend his deposition. Again, the lower courts' rulings that petitioner had presented no credible excuse for non-attendance are entitled to great deference.

Fourth and finally, petitioner repeatedly states that he had asked the lower court to postpone the deposition, presumably to accommodate his alleged disability. This assertion is false. As the District Court noted and as the record confirms, "on January 18, 1995, the plaintiff filed motions for written questions to the deposition and for the deposition to be taken by telephone. The plaintiff did not file for an extension of time." (Respondents' Appendix at 14).

In sum, even assuming that this Court would consider the newly-raised ADA argument, that claim is a fact-bound one which turns fundamentally on petitioner's assertions of disability and on the reasons for his non-attendance at deposition. The two courts below held, on the factual record before them, that no medical excuse had been proven and that no legitimate grounds for non-attendance had been presented. These essential factual findings cannot be properly disturbed.

II. PETITIONER HAS FAILED TO RAISE PROPER GROUNDS FOR RECUSAL UNDER SECTION 455(a).

Petitioner's arguments for recusal of both District Judge T. F. Gilroy Daly (now deceased) and Magistrate Thomas P. Smith (Petition at 10-11), based on unsubstantiated claims of bias and pro-union sentiment, are devoid of merit. They amount to nothing more than improper judge-shopping, in the wake of the court's dismissal of petitioner's lawsuit as a sanction for discovery abuse.

Section 455(a) requires disqualification only where a reasonable person, knowing the relevant facts, would expect that a judge has knowledge of facts that would give him or her an interest or bias in the case. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1987). "Quite simply . . ., recusal is required whenever 'impartiality might reasonably be questioned.'" *Liteky v. United States*, 510 U.S. 540, 548 (1994), *citing* 28 U.S.C. Section 455(a).

Petitioner has presented no evidence to support a claim of bias. Only petitioner knows how he has divined that Magistrate Judge Smith is "an admitted card-carrying member of a union" (Petition at 11), as there is no evidence to that effect. Even if there were, such membership would provide no proper grounds for recusal, especially where the union in question presumably is other than one of the construction union litigants in this case. *See e.g., Sierra Club v. Simkins Industries, Inc.*, 847 F.2d 1109 (4th Cir. 1987) (judge's former membership in plaintiff association does not require recusal); *Maier v. Orr*, 758 F.2d 1578, 1581 (Fed. Cir. 1985) (judge's former association with Air Force does not raise appearance of partiality); *Brody v. President & Fellows of Harvard College*, 664 F.2d 10, 11 (1st Cir. 1981), *cert. denied*, 455 U.S. 1027 (1982) (judge can properly sit in case involving alma mater); *National Auto Brokers Corp. v. General Motors Corp.*, 572 F.2d 953 (2d Cir. 1978),

cert. denied, 439 U.S. 1072 (1979) (judge's prior representation of a party does not automatically warrant disqualification); *Parrish v. Bd. of Comm'rs of Alabama State Bar*, 524 F.2d 98, 104 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976) (judge's acquaintance with witnesses and defense counsel does not require recusal). Any interest of the Magistrate in the subject matter of this case, based on imagined union membership or sympathy, is so very remote, tangential and contingent as to raise no reasonable concern of bias.

Petitioner's claims of allegedly biased judicial rulings also provide no grounds for recusal. Petitioner resorts to sheer fabrication when he cites respondents' tampering with documents and the Magistrate Judge's endorsement of such conduct. (Petition at 10-11). When petitioner first raised this scandalous claim below, the Magistrate properly ordered him to disclose the alleged source of his information, or forever be barred from making such an allegation. (Respondents' Appendix at 5). Petitioner was also instructed to make his accusations by way of affidavit. (Respondents' Appendix at 6). Petitioner failed to pursue his accusation in that he neither produced his alleged evidence nor filed an affidavit. Surely, the Magistrate Judge's efforts to silence petitioner's *ad hominem* attacks cannot be invoked as grounds for disqualification.

Petitioner also falsely claims that Magistrate Smith prevented evidence regarding union RICO violations "from coming to light" by striking that portion of his Complaint. (Petition at 11). No such order was ever entered by the Magistrate. Rather, Judge T. F. Gilroy Daly ordered portions of the complaint stricken after the first year of litigation. He did so, as his court order indicates, because much of the complaint failed to state an intelligible cause of action. (Ruling on Defendants' Motion to Dismiss, March 29, 1993).

In *Liteky v. United States*, 510 U.S. 540 (1994), this Court cautioned that judicial rulings alone almost never

constitute a valid basis for recusal. Opinions formed by a judge based on the course of litigation cannot serve as grounds for recusal unless they display "a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 555. Such is not the case here. While the lower court's rulings were obviously not to petitioner's liking, they were appropriate, consistent with the governing law, and betrayed no partiality.

III. THE COURT DID NOT ABUSE ITS DISCRETION IN AWARDING FEES AND COSTS AGAINST PETITIONER.

Petitioner attacks the District Court's Rule 37 assessment of $2,344.00 in fees and costs associated with respondents' failed attempt to depose him on January 26, 1995. (Petition at 12-13). As the court's assessment of this discovery sanction was not an abuse of discretion, *National Hockey League v Metropolitan Hockey Club,* 427 U.S. 639 (1976), this ruling provides no grounds for granting petitioner's writ.

The lower court made proper factual findings: that petitioner had provided "absolutely no proof" of a medical disability excusing his non-attendance at deposition; that he "willfully failed to appear" and thereby disobeyed a direct order of the court; and that he had failed to offer prior notice of his non-attendance to respondents' counsel. (Respondents' Appendix at 15-16). Petitioner's current factual assertions to the contrary are falsities.

Moreover, the costs awarded were not only reasonable but well documented. The Magistrate Judge held in his order that "The defendants have submitted statements breaking down their expenses associated with the attempt to depose the plaintiff. This court finds the expenses submitted to be reasonable with respect to the January 1995 deposition." (Respondents' Appendix at 17 n.4).

Once again, the lower court's fact-bound rulings regarding this discovery sanction, subsequently affirmed by the

Second Circuit Court of Appeals, are entitled to great deference. *Goodman v. Lukens, supra; Foust, supra; Ceccolini, supra; Graver Mfg., supra.* And given these factual findings, and the repeated court warnings that petitioner's continued discovery misconduct would result in sanctions (Respondent's Appendix at 1, 3 & 11),[4] the court's decision to award attorneys' fees may not be properly disturbed. *National Hockey League, supra; Valentine v. Museum of Modern Art,* 29 F.3d 47, 49 (2d Cir. 1994); *Minotti v. Lensink,* 895 F.2d 100, 102 (2d Cir. 1990); *Bobal v. Rensellaer Polytechnic Institute,* 916 F.2d 759, 764 (2d Cir. 1990), *cert. denied,* 499 U.S. 943 (1991).

IV. GIVEN THAT THE RULE 37 DISCOVERY SANCTION WAS NOT AN ABUSE OF DISCRETION, THE ALLEGED IMPORTANCE OF PETITIONER'S UNDERLYING CASE CANNOT JUSTIFY A REEXAMINATION OF THE LOWER COURT'S DISMISSAL ORDER.

Petitioner requests this Court to grant his writ and reverse the dismissal of his lawsuit because of the "national importance" of his underlying claims. In essence he is seeking a sympathy vote, asking this Court to interfere with the district court's Rule 37 sanctions, not because of any abuse of discretion, but because of the compelling substantive nature of his lawsuit. The Court has previously rejected such a role:

> The question, of course, is not whether this Court, or whether the Court of Appeals, would as an original matter have dismissed the action; it is whether the District Court abused its discretion in doing so. . . .
>
> There is a natural tendency on the part of reviewing courts, properly employing the benefit of hindsight,

---

[4] As early as October 12, 1993, the Court warned that "continued violation of . . . discovery obligations will result in the imposition of sanctions, including attorneys' fees and/or dismissal with prejudice of this lawsuit." (Respondents' Appendix at 1).

> to be heavily influenced by the severity of outright dismissal as a sanction for failure to comply with a discovery order. It is quite reasonable to conclude that a party who has been subjected to such an order will feel duly chastened, so that even though he succeeds in having the order reversed on appeal he will nonetheless comply promptly with future discovery orders of the district court. . . .
>
> But here, as in other areas of the law, the most severe in the spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent.

National Hockey League supra, 427 U.S. at 642.

By the time the district court issued its Rule 37 dismissal sanction, petitioner had: 1) terminated his first deposition at the outset by reading from a prepared statement that he was incapacitated by medication and therefore unable to testify or to recall; 2) defied numerous court orders compelling compliance with interrogatories and requests for production, thus delaying the litigation for eighteen months; 3) ignored repeated written warnings from the court that further noncooperation in discovery could result in dismissal; and 4) willfully failed to attend his second noticed deposition, in defiance of a court order, without providing advance notice to counsel of his non-attendance. On these facts, no abuse of discretion may be found. *See Minotti, supra; Valentine, supra; Bobal, supra.*

As to the "compelling nature" of petitioner's claims, that nature has been well hidden from both respondents and the lower courts, given petitioner's persistent refusal to cooperate in discovery or to abide by the court's dis-

covery orders.[5] To allow petitioner to cite the alleged merits of his claims as grounds for relief, when he has interfered with the proper discovery of them, would reward the abusive conduct which prompted the Rule 37 sanction.

CONCLUSION

For the foregoing reasons, this case presents no issues worthy of this Court's plenary review. Accordingly, the petition should be denied.

Respectfully submitted,

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* Counsel of Record

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[5] Respondents do note that petitioner's complaint states no ADA claim, *see* footnote 3 *supra*, and therefore does not encompass his current claims regarding "reasonable accommodation" of the disabled on the worksite. (Petition at 14). Petitioner's complaint dealt exclusively with technical union rules for job placement. Moreover, petitioner's assertion of substantial damages for denied employment opportunities is largely belied by his unsubstantiated claims below that he was medically disabled from any significant physical activity in this litigation. If petitioner was physically incapable of gathering documents for discovery production or of testifying at deposition, it is unlikely he could perform work on a construction site.

APPENDIX

[Filed Oct. 12, 1993]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. 5:92 CV 345 (TFGD)

APOSTOLOS TSIMBIDAROS, *pro se*,
Plaintiff

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, *et al.*,
Defendants

August 20, 1993

DEFENDANTS' JOINT MOTION FOR SANCTIONS

October 12, 1993. The plaintiff is hereby ORDERED to show cause in writing within 20 days of this date why he should not be required to pay the defendants' attorney's fees in the amount claimed by them in this motion. The plaintiff is further advised that irrespective of the ultimate disposition of this motion, continued violation of his discovery obligations will result in the imposition of sanctions, including attorneys' fees and/or dismissal with prejudice of this lawsuit.

/s/ Thomas P. Smith
THOMAS P. SMITH
U.S. Magistrate Judge

[Filed Oct. 12, 1993]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. 5:92 CV 345 (TFGD)

APOSTOLOS TSIMBIDAROS,
Plaintiff

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES and PAINTERS LOCAL UNION 1719,
Defendants

August 9, 1993

PLAINTIFF'S MOTION OBJECTING DEFENDANTS NOTICE OF DEPOSITION AND DEFENDANTS NOTICE OF INTERROGATORIES

October 12, 1993. Treating this as a motion to quash and/or a motion for protective order, it is DENIED. Plaintiff's objection to the noticing of his deposition is not well-taken. The defendants in this case have the right to take plaintiff's deposition; plaintiff's initiation of this lawsuit gave them that right. It is not at all unreasonable that the deposition which defendants seek to take be conducted in the office of defendants' attorney, nor is it unreasonablke for the plaintiff to be required to produce the documents which are specified in a subpoena duces tecum. Similarly, it is customary for depositions to continue each day until completed. Plaintiff's assertion that he "has always conveyed respect and courtesy to the attorneys representing the defendants," *id.* at 2,

is belied by the gratuitous *ad hominem* attacks which punctuate plaintiff's many filings. The defendants are free to renotice plaintiff's deposition. Plaintiff will attend that deposition and comply with any subpoena duces tecum served upon him. Plaintiff's failure to attend his deposition may result in the imposition of drastic sanctions, including dismissal of his lawsuit with prejudice.

/s/ Thomas P. Smith
THOMAS P. SMITH
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. 5:92 CV 345 (TFGD)

APOSTOLOS TSIMBIDAROS, *pro se*,
Plaintiff

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, *et al.*,
Defendants

September 9, 1993

DEFENDANTS' JOINT MOTIONS TO COMPEL DISCOVERY AND CONSOLIDATED RESPONSE TO THE PLAINTIFF'S PAPERS DATED AUGUST 21, 1993, AUGUST 28, 1993, AND SEPTEMBER 4, 1993

October 12, 1993. Defendants' joint motion to compel is GRANTED. It is hereby ORDERED that: (1) the plaintiff shall within 20 days of this date provide complete, non-evasive, fully-responsive and sworn answers to the interrogatories that defendants served on him on or about August 2, 1993, the court finding that no valid objection has been interposed as to those interrogatories; (2) the plaintiff shall produce within 20 days of this date each and every document not heretofore produced which is responsive to the defendants' August 20, 1993 document request, and to the extent such documents are claimed not to exist, the plaintiff shall so certify under oath; (3) within 30 days of the production of the an-

swers, documents, and information responsive to items (1) and (2) above, the plaintiff shall submit to an oral examination at which the plaintiff shall provide true, complete and responsive answers to questions posed to him, including questions relating to his competency to testify and *inter alia* the exact identity, time and dosage of any and all drugs ingested by him within 12 hours of his examination and during that examination; the plaintiff is free to tape record this deposition, but such a tape recording shall be in addition to, and not in lieu of, a traditional, independently, stenographically-recorded transcript of the entire deposition, which transcript shall be the official record of the deposition.

Plaintiff's unsubstantiated allegations that defendants' counsel tampered with his documents do not merit being addressed on this record; if plaintiff wishes to pursue these allegations, he is hereby ORDERED to disclose to defense counsel in writing within 20 days hereof the name, identity, and description of the Staples employee(s) who allegedly told him that defense counsel had tampered with plaintiff's documents, or be forever barred from making such an allegation;

/s/ Thomas P. Smith
THOMAS P. SMITH
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil Action No. 5:92 CV 345 (TFGD)

APOSTOLOS TSIMBIDAROS,
Plaintiff

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES and PAINTERS LOCAL UNION 1719,
Defendants

August 21, 1993

MOTION FOR SANCTIONS AGAINST THE ATTORNEYS FOR THE DEFENDANTS AND THE STENOGRAPHER

October 12, 1993. This motion is DENIED. This motion is unsupported by an affidavit or even a coherent memorandum. The papers in opposition to this motion demonstrate the reasonableness of defendants' suspension of the deposition in the circumstances. If the plaintiff wants to make a specific accusation that a particular individual stole his documents(s), he is free to do so by way of affidavit. Should such an affidavit be forthcoming, the court will address it in the normal course of business.

/s/ Thomas P. Smith
THOMAS P. SMITH
U.S. Magistrate Judge

[Filed Jul. 5, 1994]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil No. 5:92-345 (TFGD)

APOSTOLOS TSIMBIDAROS,
Plaintiff

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, *et al.*,
Defendants

RULING ON DEFENDANTS' JOINT MOTION FOR DISMISSAL

Plaintiff, proceeding *pro se*, brought this action under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, alleging that defendants violated § 221 of the constitution of the International Brotherhood of Painters and Allied Trades by not assigning workers in accordance with required geographical quotas.

On October 12, 1993, the court filed several rulings relating to discovery in this case, and plaintiff's failure to follow one of those orders is the subject of the instant motion. (Margin Endorsement on Filing 115, Filed Oct. 12, 1993 [hereinafter "October Order" or "Order"]). Under the terms of the Order, plaintiff was directed to answer defendants' interrogatories and requests for production within twenty days. By the terms of the order plaintiff's compliance was due by November 2, 1993. Absent any response by the plaintiff, defendants filed a motion for sanctions on November 15, 1993. This motion was denied without prejudice to renewal upon the District Judge's ruling on plaintiff's then-pending objec-

tions. Although Judge Daly overruled each of plaintiff's objections, defendants did not renew that motion.

Plaintiff purportedly responded to the discovery requests on or about January 19, 1994. The manner of compliance, however, has forced the defendants to file an additional motion for sanctions in which they request that this case be dismissed with prejudice or, in the alternative, that a further order issue from this court.

The October Order directed the plaintiff to:

> within twenty days of this date provide complete, non-evasive, fully-responsive and sworn answers to the interrogatories that defendants served on him on or about August 2, 1993.

(Margin Endorsement on Filing 115, Filed Oct. 12, 1993). Defendants received answers to their interrogatories on or about January 19, 1994. (Defs.' Joint Mot., Filing 173, at 3). The responses, however, were neither signed nor sworn. The Federal Rules mandate that interrogatories to parties must be answered under oath or objected to. Fed. R.Civ.P. 33(a). As noted in the October Order, no valid objections had been made to the interrogatories dated August 2, 1993.

Plaintiff does not deny that the interrogatories were neither signed nor sworn, Filing 175 at 3, but instead interposes as his excuse for disobeying an order of this court the allegation that Mr. McCarry did not tell him which of two sets of interrogatories McCarry wanted him to answer. Even assuming McCarry's failure to respond to plaintiff's inquiry, however, it is not in dispute that plaintiff did answer interrogatories. The reason why the answers he did provide were not signed under oath is a mystery that plaintiff chooses not to aid the court in resolving. The subject of this mystery, however, not only constitutes a violation of an express order issue by this court but also demonstrates the plaintiff's apparent refusal to cooperate in even the simplest discovery procedures.

The October Order also directed the plaintiff to produce, within twenty days:

> each and every document not heretofore produced which is responsive to the defendants' August 20, 1993 document request, and to the extent such documents are claimed not to exist, the plaintiff shall so certify under oath . . . .

(Margin Endorsement on Filing 115, Filed Oct. 12, 1993.) Despite the terms of the Order, plaintiff's response to the request for production, also received by the defendants on or about January 19, 1994, consisted of a general objection to the request (appearing in his response to the first numbered request), stating that "plaintiff is objecting [to] portions of these questions as unrelated, [mixed?] and above all vague and ambiguous." (Pl.'s Resp. to Def.s' Request for Produc., Defs.' Joint Mot., Filing 173, Ex. B). Plaintiff's opposition to the motion for sanctions makes it patently clear that plaintiff has responsive documents and that he has not produced them.[1] The only explanation plaintiff proffers is that he "was physically unable to drive to Hartford or to Washington D.C. to give the documents to the defendants, NOR has the money to make copies and sent [sic] them to the attorneys representing the defendants." (Pl.'s Mem. in Opp'n, Filing 175, at 2). Plaintiff, in derogation of a court order as well as his obligation to cooperate in discovery, reasons that if the defendants "really wanted the documents, they should make the initiative and accepting responsibility and not constantly complaining to the . . . court." (*Id.*). Unfortunately, given plaintiff's complete lack of cooperation in discovery, resort to the court's intervention is all the defendants have left.

The Federal Rules provide for dismissal as a sanction ("[i]f a party . . . fails to obey an order to provide or

[1] In response to the first numbered request, for example, plaintiff inexplicably states that he "has more documents available for the defendants at their request." (*Id.*).

permit discovery." Fed.R.Civ.P. 37(b)(2)(C). This sanction is also available in the event a party fails to answer interrogatories or document requests. Fed.R.Civ.P. 37(d). Although expressly available under the Rules, dismissal of a cause of action is a harsh remedy to be used only in extreme circumstances, *Theilmann v. Rutland Hosp., Inc.*, 455 F.2d 853, 855 (2d Cir. 1972), and only when the court finds "the requisite 'element of willfulness or conscious disregard' for the discovery process." *Founding Church of Scientology v. Webster*, 802 F.2d 1448, 1458 (D.C. Cir. 1986) (citations omitted), *cert. denied*, 484 U.S. 871 (1987); *see also Bobal v. Rensselaer Polytechnic Inst.*, 916 F.2d 759, 764 (2d Cir. 1990).

On this record the court finds that dismissal is inappropriate. While the fact that a party is proceeding *pro se* does not excuse the party from complying with court orders, *McDonald v. Head Criminal Court Supervisor Officer*, 850 F.2d 121, 124 (2d Cir. 1988), "*pro se* litigants are not generally familiar with the procedures and practices of the courts" and "must . . . be made aware of the possible consequences of their actions." *Bobal*, 916 F.2d at 764. Plaintiff has been warned once of the possibility of dismissal with prejudice should he continue to violate his discovery obligations.[2] Nevertheless, plaintiff's responses to both the interrogatories and production request were sent to the defendants, albeit in an unacceptable form. The fact that it has taken defendants over four months to bring this to the court's attention certainly is a factor militating against dismissing this case.

Defendants, however, are entitled to the information sought in a form consistent with the Federal Rules. Accordingly their motion (filing 173), treated in the alternative as a motion to compel, is GRANTED. The court hereby ORDERS that within twenty days of the date of this Ruling plaintiff SHALL:

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[2] *See* Margin Endorsement on Filing 101, Filed Oct. 12, 1993.

(1) provide complete, non-evasive, fully responsive and sworn answers to the interrogatories that defendants served on him on or about August 2, 1993; AND FURTHER SHALL

(2) *produce* and, in a manner arrived at through consultation with defendants' counsel, *deliver* each and every document not heretofore produced which is responsive to the defendants' August 20, 1993, document request, and to the extent such documents are claimed not to exist or not in plaintiff's custody or control, the plaintiff shall so certify under oath.

Within thirty days of the twenty-day deadline established above, plaintiff hereby is ORDERED to submit to a deposition at which he SHALL provide true and responsive answers to the questions posed to him, including questions related to his competency to testify and the identity, time and dosage of any and all drugs ingested by him within the preceding twelve-hour period.

The court is mindful that the terms of this Order are virtually identical to the terms of the October Order. As such, obtaining this Order not only needlessly has distracted this case from the litigative process but also wastefully drained the limited resources of this court. The plaintiff is cautioned that his failure to obey this or any other Order of this court or any further manifestation of a continued failure to cooperate in discovery will result in this case being dismissed with prejudice.

It is so ordered.

Dated at Hartford, Connecticut, this 5th day of July, 1994.

/s/ Thomas P. Smith
THOMAS P. SMITH
U.S. Magistrate Judge

[Filed Apr. 3, 1994]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Civil No. 5:92-345 (AWT)

APOSTOLOS TSIMBIDAROS,
Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS & ALLIED TRADES, *et al.*,
Defendants.

RECOMMENDED RULING ON DEFENDANTS' JOINT MOTION FOR DISMISSAL WITH PREJUDICE

The plaintiff, proceeding *pro se*, brought this action under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, alleging that the defendants violated § 221 of the constitution of the International Brotherhood of Painters and Allied Trades by not assigning workers in accordance with required geographical quotas. The defendants move to dismiss the complaint with prejudice under Fed.R.Civ.P. 37(b)(2)(C) because the plaintiff has repeatedly disregarded court orders and failed to cooperate with discovery, causing the defendants to incur substantial expenses. The issue before the court is whether the plaintiff's refusal to attend his deposition warrants dismissal of the action with prejudice.

For the reasons stated below, the defendants' motion for dismissal with prejudice should be GRANTED, and the defendants should be awarded costs and attorneys' fees.

FACTS

After an examination of the complaint, prior rulings, and other pleadings filed in this matter, the court finds the following undisputed facts. The defendants first attempted to take the plaintiff's deposition on August 19, 1993. During the first question posed to him, the plaintiff read a prepared statement, claiming that he would not be bound by his testimony because he was taking certain prescription medication. The defendants immediately stopped the deposition. According to the defendants, the plaintiff refused to provide any proof that he was actually taking medication or proof of a discernible effect on his mental proficiency.

The defendants subsequently filed a motion to compel discovery. On October 12, 1993, this court ruled that the defendants in this case have the right to take the plaintiff's deposition.[1] This court also held that it is reasonable that the deposition which the defendants seek to take be conducted in the office of the defendants' attorney. In addition, this court specifically ordered the plaintiff to attend the deposition and warned the plaintiff that his "failure to attend his deposition may result in the imposition of drastic sanctions, including dismissal of the lawsuit with prejudice." This court ordered the deposition to be scheduled within thirty days of the plaintiff's compliance with the interrogatories that the defendants served on him on or about August 2, 1993.

The plaintiff repeatedly failed to comply with the discovery procedures. In its July 5, 1994 ruling on another of the defendants' motions to compel discovery, this court specifically ordered the plaintiff to submit to a deposition. This time, the plaintiff was warned that "his failure to obey this or any other order of this court or any further manifestation of a continued failure to cooperate in dis-

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[1] Margin Endorsement on Filing 101, dated Oct. 12, 1993.

covery will result in this case being dismissed with prejudice." [2]

On January 10, 1995, the plaintiff finally complied with the defendants' interrogatories. That same day, the defendants scheduled the plaintiff's deposition for January 26, 1995 at 10:30 a.m. at the office of the defendants' attorney in East Hartford, Connecticut. The defendants sent notice to the plaintiff and specifically asked the plaintiff to provide advance notice if he was unable to attend because the attorney for International Brotherhood would be flying in from Washington, D.C..

On January 18, 1995, the plaintiff filed motions for written questions to the deposition and for the deposition to be taken by telephone. The plaintiff did not file for an extension of time. On January 18, 1995, the defendants' counsel advised the plaintiff in writing that he was expected to attend his deposition in the absence of court action on his motions,[3] and the defendants' counsel then renewed his request that the plaintiff provide advance notice in the event that he would not attend.

The plaintiff failed to attend his deposition on January 26, 1995. According to the defendants, the plaintiff did not notify them that he would be absent. The defendants' attorneys and a court reporter were in attendance at the scheduled time and place, and the record was kept open for two hours. According to statements and itemizations submitted by the defendants, they incurred costs and attorneys' fees in the amount of $2,344.00 as a result of this attempt to depose the plaintiff.

STANDARD

The Federal Rules provide for dismissal as a sanction "[i]f a party . . . fails to obey an order to provide or

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[2] Ruling on Defendants' Joint Motion for Dismissal, Filing 182, dated July 5, 1994.

[3] These motions were denied by this court on January 30, 1995. *See* Margin Endorsement on Filings 215 & 216, Filed Jan. 30, 1995.

permit discovery." Fed.R.Civ.P. 37(b)(2)(C). This sanction is also available in the event a party fails to answer interrogatories or document requests. Fed.R.Civ.P. 37(d). Although expressly available under the Rules, dismissal of a cause of action is a harsh remedy to be used only in extreme circumstances, *Theilmann v. Rutland Hospital, Inc.*, 455 F.2d 853, 855 (2nd Cir. 1972), and only when the court finds "willfulness, bad faith, or any fault on the part of the prospective deponent." *Bobal v. Rensselaer Polytechnic Inst.*, 916 F.2d 759, 764 (2nd Cir. 1990).

DISCUSSION

The fact that the plaintiff is proceeding *pro se* does not excuse him from complying with court orders. *McDonald v. Head Criminal Court Supervisor Officer*, 850 F.2d 121, 124 (2nd Cir. 1988). While "*pro se* litigants are not generally familiar with the procedures and practices of the courts" and must "be made aware of the possible consequences of their actions," *Bobal*, 916 F.2d at 764, the plaintiff has repeatedly been informed of his discovery obligations and warned by this court that the case would be dismissed with prejudice should he continue to violate those obligations. Moreover, the plaintiff disobeyed a direct order of this court to attend his deposition.

Conscious disregard for court orders and the discovery process justifies the sanction of dismissal. *Minotti v. Lensink*, 895 F.2d 100 (2nd Cir. 1990). When *pro se* litigants flout the obligation to comply with court orders, "they, like all litigants, must suffer the consequences of their actions." *Baker v. Ace Advertising Service, Inc.*, 153 F.R.D. 38, 40 (S.D.N.Y. 1992). In the present case, the plaintiff failed to heed discovery orders on several occasions, thereby delaying the case for approximately eighteen months.

The court finds that the plaintiff willfully failed to appear at his scheduled deposition in January 1995 without offering the defendants any prior notice. The plaintiff offers no excuse for failing to inform the defendants

that he would not attend the deposition. He claims that he had already stated in his "paperwork . . . that he was not going to East Hartford on the account of his operations and the possibility of bad weather."

With regard to his direct disobedience of this court's order, the plaintiff states that at the time of the order, the court was unaware of the following: (1) "plaintiff would have 2 operations within 5 months;" (2) "the defendants would deliberately 'pick and choose' the end of January to take plaintiff's deposition in East Hartford;" and (3) "the defendants will deliberately 'stay low' the whole summer just to gain unfair advantagement [sic] of a sick plaintiff." The court finds each of these arguments to be wholly without merit. If the plaintiff is attempting to claim a medical excuse as his reason for failing to appear at the scheduled deposition, he has provided the court with absolutely no proof.

In his brief opposing the motion to dismiss with prejudice, the plaintiff makes numerous allegations of attorney misconduct. Specifically, he accuses counsel for the defense of the following: "making obscene telephone calls and harassing plaintiff . . . playing with plaintiff's mailbox . . . filing paperwork without providing plaintiff copies . . . and using the same 'lollypop' and pouring crocodile tears and citing irelevant [sic] cases to impress the honorable court." While these are all very serious allegations, none of them is supported by any factual proof, nor is one of them even remotely responsive to the issue before the court.

The closest that the plaintiff comes to directly responding to the motion to dismiss is his statement that "rule 37(b)(2)(C) does not meet the requirements for a dismissal and all the cited cases by the defendant are irelevant [sic]." The plaintiff offers no facts, legal arguments, or case law to support his assertions.

With regard to the issue of costs and attorneys' fees, the plaintiff's only assertion is that the bill of $2,344.00

is "outrageous." However, he does not specifically contest any of the itemized charges.[4]

In sum, the court finds that the plaintiff knowingly and willfully disobeyed an order by this court to attend his deposition. This court has warned the plaintiff on several occasions that his case would be dismissed with prejudice if he refused to comply with discovery. Accordingly, this court holds that the sanction of dismissal with prejudice against this *pro se* plaintiff is warranted and that costs and attorneys' fees are justified.

CONCLUSION

For all the foregoing reasons, the defendants' joint motion for dismissal with prejudice (filing 220) should be GRANTED, and costs and attorneys' fees in the amount of $2,344.00 should be awarded to the defendants.

Either party may seek review of this report and recommendation as provided in 28 U.S.C. § 636(b) (written objections to recommended ruling must be filed within ten days of service of the same); Fed.R.Civ.P. 6(a), 6(e), & 72; and Rule 2 of the Local Rules for United States Magistrate Judges (D. Conn.). Failure to object in a timely manner may preclude further review. *Small v. Secretary of Health and Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989).

Dated at Hartford, Connecticut this 7th day of April, 1995.

/s/ Thomas P. Smith
THOMAS P. SMITH
United States Magistrate Judge

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[4] The defendants have submitted statements breaking down their expenses associated with the attempt to depose the plaintiff. This court finds the expenses submitted to be reasonable with respect to the January 1995 deposition. The defendants have also submitted expenses relating to an earlier deposition in August 1993. Recovery of these costs is denied.

(3)

No. 96-873

Supreme Court, U.S.
FILED
FEB 21 1997
CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1996

APOSTOLOS TSIMBIDAROS
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AND PAINTERS LOCAL UNION 1719
Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Second Circuit.

REPLY TO BRIEF IN OPPOSITION

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25 pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....iii

STATEMENT OF THE CASE..... 1

REASONS FOR REPLY..... 2

I. THE PETITIONER ARGUED AND PLED THAT THE RESPONDENTS VIOLATED THE AMERICANS WITH DISABILITIES ACT. THE RESPONDENTS DISCRIMINATED AGAINST THE PETITIONER THROUGHOUT THIS CASE; THE DISTRICT COURT CONDONED THIS DISCRIMINATION. 2

A. THE PETITIONER ASSERTED MANY TIMES THAT THE RESPONDENTS DISCRIMINATED AGAINST HIM..... 2

B. THE RESPONDENTS WERE WELL AWARE AND INFORMED OF THE PETITIONER'S DISABILITIES..... 3

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SANCTIONED THE PETITIONER AND NOT THE RESPONDENTS FOR DISCOVERY VIOLATIONS..... 4

A. THE PETITIONER COMPILED WITH DISCOVERY 4

B. THE RESPONDENTS VIOLATED THE SPIRIT AND TEXT OF DISCOVERY RULES..... 5

III. THE DISTRICT COURT ERRED IN AWARDING COSTS THAT WERE UNREASONABLE. THE RESPONDENTS WILFULLY INCURRED UNNECESSARY AND UNREASONABLE COSTS..... 6

TABLE OF CONTENTS - Continued

Page

IV. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DISMISSED THE PETITIONER'S CASE ACCORDING RULE 37..... 8

V. THE UNITED STATES SUPREME COURT HAS THE AUTHORITY TO AND SHOULD REVIEW THIS CASE. OTHERWISE, THE DISCRIMINATION OF PERSONS WITH DISABILITIES AND UNION MEMBERS WILL CONTINUE. 9

CONCLUSION..... 10

TABLE OF AUTHORITIES

Page

Cases

U.S. v. Boch Oldsmobile Inc., 909 F.2d 657, 660 (1st Cir. 1990).....10

Supreme Court Rules

Rule 15.....1

Rule 17.....1

Rule 33(g).....1

Federal Rules of Civil Procedure

Rule 37.....8,9

Constitution And Statutes

Americans with Disabilities Act.....2,8,9

LMRA § 301.....3,10

In the
Supreme Court of the United States

No. 96-873

APOSTOLOS TSIMBIDAROS
Petitioner,

v.

INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, AND PAINTER LOCAL UNION 1719
Respondents.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Second Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The Petitioner, Apostolos Tsimbidaros, pursuant to Supreme Court Rules 15 and 17, respectfully replies to the Respondents' brief in opposition to his petition for writ of certiorari.

The Respondents' brief in opposition violates United States Supreme Court Rule 33(g). Their brief is beyond thirty pages, in violation of page limitations.

The Petitioner will clear up the Respondents' misrepresentation of the facts critical to this

case. The Respondents painted an inaccurate picture which does not conform to the facts. The Petitioner respectfully asks this Honorable United States Supreme Court the opportunity to align the facts of the case to reality.

The reality of this case is harsh. The Respondents discriminated against an elderly, disabled man. The lower courts condoned this discrimination.

REASONS FOR REPLY

I. THE PETITIONER ARGUED AND PLED THAT THE RESPONDENTS VIOLATED THE AMERICANS WITH DISABILITIES ACT. THE RESPONDENTS DISCRIMINATED AGAINST THE PETITIONER THROUGHOUT THIS CASE; THE DISTRICT COURT CONDONED THIS DISCRIMINATION.

A. THE PETITIONER ASSERTED MANY TIMES THAT THE RESPONDENTS DISCRIMINATED AGAINST HIM.

The Respondents argue that this Honorable United States Supreme Court should close its eyes to their violations of the Americans with Disabilities Act. The Respondents argue that the Petitioner never alleged any discrimination, so this Honorable Court should not look at and consider any discrimination the Respondents inflicted upon the Petitioner. (Brief in Opposition at 6-9).

The Respondents, however, failed to mention to this Honorable Supreme Court that the Petitioner pled violations of the Americans with Disabilities Act from the very beginning of this lawsuit. For example, the Respondents admit this in their memorandum in support of their Joint Motion for Dismissal With Prejudice dated January

31, 1995. In the footnote that runs from page 10 through 12 of that document, the Respondents state that "the gravaman of the plaintiff's lawsuit is that the defendants violated section 301 of the LMRA by failing to refer the plaintiff work suited only for able bodied in lost wages."

B. THE RESPONDENTS WERE WELL AWARE AND INFORMED OF THE PETITIONER'S DISABILITIES.

The Respondents insist that the Petitioner never produced documentation to prove that he was incapacitated and under doctor's care. Once again, the Respondents claims do not match the facts.

The Petitioner filed three separate requests with the District Court respectfully requesting delays in the suit due to surgeries. Along with these requests, the Petitioner filed pre-surgical medical documents with the District Court and with the Respondents. These records clearly indicate that the Petitioner suffered from disabilities.

The Respondents, however, either were not satisfied with these documents or cruelly wanted to watch the severely disabled Petitioner stumble through hoops. The Respondents asked the Petitioner's physician to examine him and to provide an additional medical report to be used by the Respondents.

Since the Respondents sought this medical report, the treating physician sought payment from the Respondents. But, the Respondents refused to take the necessary steps to obtain this report. On several occasions, the Petitioner filed papers with the District Court and the respondents indicating that the treating physician wanted to get paid.

Yet, the Respondents, with complete

disrespect for this Honorable Supreme Court, continue to assert that the Petitioner failed to produce any medical records regarding his physical condition.

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT SANCTIONED THE PETITIONER AND NOT THE RESPONDENTS FOR DISCOVERY VIOLATIONS.

A. THE PETITIONER COMPLIED WITH DISCOVERY

The Respondents assert that the Petitioner violated discovery rules. (Brief in Opposition at 13-15). The Respondents, however, fail to mention how they violated the spirit of discovery and how the Petitioner complied with their numerous inconsistent, unreasonable discovery requests despite his disabilities.

The Respondents were fully aware of the serious medical condition of the Petitioner. Despite this knowledge, the Respondents sought to depose the Petitioner on August 13, 1993. The Respondents mislead this Honorable Supreme Court with the impression that the Petitioner stopped or hampered this deposition.

Before the deposition started, the Petitioner wanted a statement of his physical condition to appear on the record. Following this, the Respondents subjected the Petitioner to a very lengthy deposition. Contrary to the picture brushed by the Respondents, the Respondents had the opportunity to ask as many questions as they wanted. The Respondents asked enough questions to fill a thirty five page typed transcript.

B. THE RESPONDENTS VIOLATED THE SPIRIT AND TEXT OF DISCOVERY RULES.

The Respondents paint the picture that their hands are clean. But, the Respondents hands are filthy; the Respondents thwarted discovery while mocking the elderly, pro se, disabled Petitioner. The Respondents took off their angel wings exposing discovery "monsters," not interested in the truth.

The Respondents direct this Honorable Supreme Court's attention to the first deposition of the Petitioner. The Respondents failed to mention two facts about this deposition.

First, the Respondents brought a threatening figure to intimidate the Petitioner at this deposition. This "bodyguard" is not a party to the case. He weighed 400 pounds and towered over the Petitioner. The District Court would not authorize his presence. Meanwhile, the Petitioner's arm was in a sling; the Petitioner underwent surgery weeks earlier. This bully, egged on by the Respondent attorneys, assaulted the Petitioner. He menaced and intimidated the Petitioner. Promises were made to break the Petitioner's arm. Then, the abuse became physical.

Second, the Respondents demanded that the Petitioner hand over important documents to be copied. The Respondents failed to return some crucial pieces of evidence. The level of unprofessionalism was great; the Respondent attorneys even failed to mark these documents for identification.

But, the Respondents were not satisfied with their efforts to degrade the disabled Petitioner. The Respondents decided to schedule another deposition for January 26, 1996 to perhaps finish the job.

The Respondents continued to thwart discovery

after the first deposition. Based on their actions, it seems that the Respondents tried to hide the truth. The Respondents filed two sets of interrogatories. They sent one set to the petitioner by mail. They left another set in the petitioner's mail box late at night. Each set of interrogatories involved different sets of questions.

The Petitioner asked the Respondent attorneys which set of interrogatories he should answer. The Respondents refused to respond.

With no other alternative, the Petitioner sought a determination by the District Court as to which set of interrogatories he should answer. The District Court reached this conclusion close to a year after the petitioner's request.

Instead of sanctioning the Respondents, the District Court sanctioned the Petitioner clearly abusing its judicial discretion. At the time, U.S. District Judge Daly, the judge assigned the case, suffered through the excruciating effects of cancer. It was impossible for him to perform his duties. His illness was terminal. Thus, Magistrate Smith made the critical decisions of discovery, discovery sanctions, and dismissal. Magistrate Smith, a card carrying union member and supporter, should have disqualified himself from the case. His pro-union animus is evidenced by his questionable, pro-union decisions.

III. THE DISTRICT COURT ERRED IN AWARDING COSTS THAT WERE UNREASONABLE. THE RESPONDENTS WILFULLY INCURRED UNNECESSARY AND UNREASONABLE COSTS.

The Respondents claim that the District Court did not abuse its discretion in awarding fees and costs against the Petitioner. (Brief in Opposition at 12-13). The Respondents, however,

suspiciously failed to address the Petitioner's contention that the Respondents unreasonably escalated their costs. This omission is neither accidental nor coincidental. Rather, the Respondents are unable to create a reasonable excuse.

A District Court may impose costs "reasonably" incurred by attorneys. A court may not force a party to be responsible for costs the other party incurred unreasonably.

The Respondents deposed the Petitioner on August 15, 1993. In December of 1995, the Petitioner underwent a serious surgical procedure. He immediately documented this procedure with the District Court and the Respondents. The Respondents then scheduled to depose the Petitioner for January 26, 1996. The Petitioner immediately filed motions with the District Court because the Respondents would not voluntarily postpone the deposition a few weeks in order to allow the Petitioner to recuperate. The Petitioner contacted Respondent Attorney David McCarry and reiterated that he would not be able to attend the deposition on the date scheduled. In addition, the Petitioner instructed him to contact the court reporter and the other attorneys of the cancellation.

Instead, Respondent Attorney David McCarry ordered that fellow attorney Barbara Camens purchase a round-trip plane ticket from Washington, D.C. to Connecticut. He also ordered that she take a taxi to and from the airport. His cost escalation did not stop there; he ordered the court reporter to arrive anyway. He submitted a cost of $2,344 for this deposition which the District Court awarded.

The Respondents argue to this Honorable Supreme Court that these costs are "reasonable" simply because the District Court sanctioned them.

(Brief in Opposition at 12). End of argument and discussion, according to the Respondents.

IV. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DISMISSED THE PETITIONER'S CASE ACCORDING TO RULE 37.

The Respondents cry that the behavior of the Petitioner reached the level of Rule 37 sanctions. (Brief in Opposition at 14). The District Court cited that it dismissed the case because the Petitioner did not attend a second deposition. But, the Respondents fail to bring to light to this Honorable Supreme Court the circumstances involving this second deposition. The circumstances clearly show that the District Court allowed the Respondents to violate the Americans with Disabilities Act.

The Respondents deposed the Petitioner on August 15, 1993. The Respondents had the opportunity to ask the Petitioner all the questions they wanted. The Petitioner informed the Respondents that his surgeon would perform a serious surgery on him in December of 1995. The Respondents decided to schedule a second, unnecessary deposition for January of 1996, a few weeks after this serious surgery. The Respondents knew the Petitioner could not use his hands due to the surgery. Yet the Respondents sought the deposition an hour and a half away from the Petitioner's home in the middle of a terrible New England winter.

The Petitioner's only hope for justice was through the District Court. He asked that the District Court step in to provide reasonable accommodations for this deposition in accordance with the Americans with Disabilities Act.

Unfortunately, the pro-union Magistrate failed him. The District Court failed to authorize

reasonable accommodations. Magistrate Smith ordered a sick, incapacitated person unable to even take care of his personal needs at the time, to travel one and a half hours each way. At the time, the Petitioner took 500mg of Naprosyn every four hours and 5mg of Diabata twice a day. The District Court took the further step of dismissing the Petitioner's case according to Rule 37 when he failed to attend the deposition.

V. THE UNITED STATES SUPREME COURT HAS THE AUTHORITY TO AND SHOULD REVIEW THIS CASE. OTHERWISE, THE DISCRIMINATION OF PERSONS WITH DISABILITIES AND UNION MEMBERS WILL CONTINUE.

In their brief in opposition, the respondents belittle and reduce the petitioner's plea as an attempt to get a "sympathy vote" from this Honorable United States Supreme Court. (Brief in Opposition at 13-15). Apparently, the Respondents do not blink at discriminating against the disabled and against honest union members who pay their union dues.

State and federal law requires that unions ensure that government funded projects include the hiring of people with disabilities. Local 1719 failed to hire the legal proportionate number of people with disabilities. In addition, the Respondents failed to ensure reasonable accommodations as required by the Americans with Disabilities Act. The disabled and other union members starved on the "out-of-work" list. The Respondents, Local 1719 and the International, allowed out of town contractors to complete massive projects, funded by the Department of Housing and Urban Development and other federal agencies, without hiring persons with disabilities and without making reasonable accommodations.

The Petitioner brought suit and notified the

District Court of the discrimination committed by the Respondents. Yet, the Respondents insult this Honorable Supreme Court by claiming ignorance of such discrimination. The Respondents, however, knew what the Petitioner alleged when he filed this case with the District Court. For example, the Respondents admitted, in the footnote that runs from page 10 through 12 of their Joint Motion for Dismissal With Prejudice dated January 31, 1995, that "the gravaman of the plaintiff's lawsuit is that the defendants violated section 301 of the LMRA by failing to refer the plaintiff work suited only for able bodied in lost wages." The Respondents, like legal assassins, killed the Petitioner's case and spirit.

The Supreme Court can accept a petition for Writ of Certiorari when the case presents extraordinary circumstances. U.S. v. Boch Oldsmobile Inc., 909 F.2d 657, 660 (1st Cir. 1990). The rights of the disabled and handicapped Americans have been violated. This Honorable United States Supreme Court can and should halt this discrimination by granting this writ.

CONCLUSION

For the foregoing reasons and those stated in the Petitioner's original Writ, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Apostolos Tsimbidaros

Apostolos Tsimbidaros
Petitioner
Pro Se
72 Whittier Street
Bridgeport, CT 06605
(203) 334-2578

TABLE OF CONTENTS OF APPENDIX

Page

PLAINTIFF'S FIRST REQUEST FOR DELAY DUE TO SURGERY ..... App. 2

PLAINTIFF'S SECOND REQUEST FOR DELAY DUE TO SURGERY..... App. 3

PLAINTIFF'S THIRD REQUEST FOR DELAY DUE TO SURGERY ..... App. 4

PLAINTIFF'S MOTION FOR DEPOSITION TO BE TAKEN BY TELEPHONE..... App. 5

PLAINTIFF'S MOTION FOR DEPOSITION UPON WRITTEN QUESTIONS..... App. 6

PLAINTIFF'S FIRST MOTION FOR SUPPLEMENTAL PLEADINGS..... App. 7

PLAINTIFF'S SECOND MOTION FOR SUPPLEMENTAL PLEADINGS..... App. 8

MOTION TO ENFORCE THE RICO STATUTE AGAINST THE DEFENDANTS..... App. 9

MEDICAL REPORTS INDICATING DISABILITIES PRIOR TO 1993..... App.10

200

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

App. 2

Aug 23 9 29 AM '94

Apostolos Tsimbidaros
Plaintiff

Civil Action No.

V.

FILED

national Brotherhood of
ers and Allied Trades AND
ers Local Union 1719
Defendants

5:92 CV 345 (TFGD)

B

August 24,1994

PLAINTIFF'S REQUEST FOR DELAY DUE TO SURGERY

tiff respectfully is asking the honorable court for a sort delay due
upcoming surgery.

tiff wishes to inform the honorable court and the counsel for the
dants that August 23,1994 has completed pre-admitting tests and he is
ked in " for a series of a left arm surgery starting on August 30,1994.

tiff will have a cast or a splint for an unknown period and from past
ience he will be under " pain Killers " during this time of incapacitation
ecovery.

Respectfully Submitted
Apostolos Tsimbidaros
plaintiff
72 Whittier Street
Bridgeport,Conn.,06605
Phone No.203-334-2578

October 7, 1994. Civil No. 5:92-345 (TFGD) (filing 200).
DENIED. This motion appears to be moot.

THOMAS P. SMITH
U.S. MAGISTRATE JUDGE

FILED
OCT 7 3 01 PM '94

210

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Nov 16 9 16 AM '94

App. 3

Apostolos Tsimbidaros
Plaintiff

V.

International Brotherhood of
Painters and Allied Trades AND
Painters Local Union 1719
Defendants

Civil Action No.

5:92 CV 345(TFGD)

November 14,1994

PLAINTIFF'S REQUEST FOR DELAY DUE TO SURGERY

.....

Plaintiff respectfully is asking the honorable court for a sort delay due to upcoming surgery.

Plaintiff wishes to inform the honorable court and the counsel for the defendants that on Monday November 28,1994 is scheduled for Medial and Ulnar nerves release surgery.

Plaintiff will have a cast or a splint for an unknown time and from past experience will be under " pain killers " during this incapacitation and recovery.

Respectfully Submitted
Apostolos Tsimbidaros
Apostolos Tsimbidaros
plaintiff
72 Whittier Street
Bridgeport,Conn.,06605
Phone No.203-334-2578

DEC 1 1 55 PM '94

December 15, 1994. Civil No. 5:92-345 (TFGD) (filing 210). The motion for delay due to surgery is GRANTED, absent objection. All pretrial deadlines remain the same.

Thomas P. Smith
Thomas P. Smith
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT FILED App. 4

Apostolos Tsimbidaros
Plaintiff

V.

International Brotherhood of
Painters and Allied Trades AND
Painters Local Union 1719
Defendants

Civil Action No. 5:92 CV 345 (AWT)

April 4,1995

PLAINTIFF'S REQUEST FOR A 30 DAY DELAY DUE TO SURGERY

Plaintiff acting as his own attorney respectfully is asking the honorable court for a 30 day delay due to upcoming surgery.

Plaintiff wishes to inform the honorable court and the counsel for the defendants that April 27,1995 he is scheduled for surgery on his left arm(elbow) for the release of " entraped nerves ".

Also that plaintiff has to undergo certain pre-surgery tests in between now and April 27,1995.

From past experience plaintiff's arm will be wrapped up to a sort of a splint or cast for 2 or 3 weeks and prescribed pain killers will be given to ease the pain.

5/12/95. Moot.
Thomas P. Smith
U.S.M.J.

Respectfully Submitted

Apostolos Tsimbidaros
Plaintiff
72 Whittier Street
Bridgeport,Conn.,06605
Phone No.203-334-2578

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

App. 5

Apostolos Tsimbidaros
Plaintiff

V.

International Brotherhood of
llied Trades AND
. Union 1719
ndants

Civil Action No.

5:92 CV 345 (AWT)

January 17,1995

TIFF'S MOTION FOR DEPOSITION TO BE TAKEN BY TELEPHONE

uant to local rule 9(a)(1) and federal rule 30(b)(7):theparties
deposition to be taken by telephone,respectfully is asking
court·s permission the defendants to take their deposition

iable to travel and unable to go out on torterous weather,
ctfully is asking the honorable court to instruct the
ake their deposition by telephone.

le 32(a)(3)(c):Witness is unable to travel due to unknown
ons or due to illness,should be taken under consideration.

S NOT REQUIRED

Respectfully Submitted
Apostolos Tsimbidaros
plaintiff
72 Whittier Street
Bridgeport,Conn.,06605
Phone No 203-334-2578

January 30, 1995. Civil No. 5:92-345 (AWT) (filing 216). DENIED.

Thomas P. Smith
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

App. 6

Apostolos Tsimbidaros
Plaintiff

V.

International Brotherhood of
Painters and Allied Trades AND
Painters Local Union 1719
Defendants

Civil Action No.

5:92 CV 345 (AWT)

January 17,1995

PLAINTIFF'S MOTION FOR WRITTEN QUESTIONS FOR DEPOSITION.

.....

Plaintiff pursuant to local rule 9(a)(1) and federal rule 31(a)respectfully moves to file this motion with the honorable court,deposition upon written questions.

Plaintiff due to recent surgeries and slow recovery process and permanent nerve injuries on his left arm,is unable to travel under inclement weather conditions occuring during th month of January.

Therefore plaintiff been concern for his life and the life of others , respectfully is asking the honorable court to grand his motion for deposition under written questions and instruct the defendants to do so.

Respectfully Submitted
Apostolos Tsimbidaros
Apostolos Tsimbidaros
plaintiff
72 Whittier Street
Bridgeport,Conn.,06605
Phone No.203-334-2578

ORAL ARGUMENT IS NOT REQUIRED

.....

January 30, 1995. Civil No. 5:92-345 (AWT) (filing 215). DENIED.

Thomas P. Smith
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

App. 7

Apostolos Tsimbidaros
Plaintiff

Civil Action No.

V.

International Brotherhood of
Painters and Allied Trades AND
Painters Local Union 1719
Defendants

5:92 CV 345 (TPGD)

February 18,1994

PLAINTIFF'S MOTION FOR SUPPLEMENTAL PLEADINGS

Plaintiff pursuant to local rule 9(a) and 15(d) moves to file this motion with the honorable court because occurrences and events requiring the transaction.

Plaintiff with his EXHIBIT No.1,already filed with the honorable court has shown that he had physical injuries occured 1987 and 1993.

Plaintiff with the honorable court's permission wishes to add to his pleadings:

1)Americans with disabilies Act of 1990,42 U.S.C.12102 §§3602(n),3604(c).

2)Rehibilitation Act of 1973,29 U.S.C. §§706-795(i).

3)Age discrimination in Employment Act of 1967,29 U.S.C §§623(a)-621-634.

4)Executive order 12201 protecting individuals with disabilities.

5)Regulatory Flexability Act.

ORAL ARGUMENT IS NOT REQUESTED

Respectfully Submitted

Apostolos Tsimbidaros

Apostolos Tsimbidaros
Plaintiff
72 Whittier Street
Bridgeport,Conn.,06605
Phone No.203-334-2578

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

App. 8

Apostolos Tsimbidaros
Plaintiff

V.

International Brotherhood of
Painters and Allied Trades AND
Painters Local Union 1719
Defendants

Civil Action No.

5:92 CV 345 (TFGD)

July 20,1994

PLAINTIFF'S MOTION FOR SUPPLEMENTAL PLEADINGS

Plaintiff pursuant to rule 8(a) of the Fed.R. of Civ.P. and 15(d) moves to file this motion with the honorable court because occurrences and events are requiring the transaction.

Plaintiff with his exhibit No.1, already filed with the honorable court has shown that he had physical injuries occurred 1987 and 1993.

Plaintiff with the honorable court's permission wishes to add to his original pleadings ,the following new pleadings :

1)Americans with disabilities Act of 1990,42 U.S.C.12102:§§3602(n),3604(c).

2)Rehibilitation Act of 1973,29 U.S.C §§706-795(i).

3)Age discrimination in Employment Act of 1967,29 U.S.C §§623(a),621-634.

4)Executive Order 12201.

5)Regulatory Flexability Act

6)29 CFR.1604.6(a).Internal segregation within an agency is illegal and unlawful.

All these acts provide releif,which plaintiff has stated in his original pleadings.

Respectfully Submitted
Apostolos Tsimbidaros
Plaintiff
72 Whittier Street
Bridgeport,Conn.,06605
Phone No.203-334-2578

ORAL ARGUMENT IS NOT REQUIRED

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Apostolos Tsimbidaros
Plaintiff

V.

International Brotherhood of
Painters and Allied Trades AND
Painters Local Union 1719
Defendants

Civil Action No.

5:92 CV 345 (TPGD)

August 2,1994

MOTION TO ENFORCE THE RICO STATUTE AGAINST THE DEFENDANTS

Plaintiff pursuant to local rule 9(d)(4) respectfully is asking the honorable court to enforce the Racketeer Influenced and Corrupt Organizations Act 28 U.S.C.§ 1331 against the defendants.

The painters union have been engaged in a pattern of racketeering and have purpotedly and fraudulently breached their fiduciary duty to their members by collecting dues and other monthly payments without giving the union members any of the benefits.

Instead of placing members to work,the union higher ups used the money collected for their own benefits.

Painters Local 1719 by-laws states that " any placement to work,shall be through the Business Representative's office ".

The painters constitution(mandatory clauses) states that "75 percent of the work force as far as the out of Town painting contractors is concerned should be from the locality and 25 percent from the contractor's home office."

29 CFR 1604.6(a) states that: "internal segregation within an agency is illegal and unlawful".

ORAL ARGUMENT IS NOT REQUESTED

Respectfully Submitted

Apostolos Tsimbidaros

plaintiff

72 Whittier Street
Bridgeport,Conn.,06605
Phone No.203-334-2578

STATE OF CONNECTICUT — J Armstrong 10/16/81

DEPARTMENT OF EDUCATION
Division of Vocational Rehabilitation

WELFARE DEPARTMENT
Public Assistance

Bureau of Client Services
Division of Rehabilitation Services
1470 Barnum Avenue
Bridgeport CT 06610

☐ AID TO DEPENDENT CHILDREN ☐ AID TO DISABLED

CASE NO. | DATE OF APPLICATION

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

SIGNED (Patient or parent)

TO BE FILLED IN BY THE VOCATIONAL REHABILITATION COUNSELOR OR WELFARE SOCIAL WORKER

PATIENT DATA

PATIENT'S NAME: PAUL TSIMBIDAROS | AGE: 57 | SEX: Male

PATIENT'S ADDRESS: 72 Whittier Street, Bridgeport, Connecticut 06605

PATIENT'S STATEMENT OF HIS DISABILITY:

REMARKS:

EXAMINATION IS REQUIRED TO ESTABLISH INDIVIDUAL'S ELIGIBILITY FOR
☒ VOCATIONAL REHABILITATION SERVICES ☐ PUBLIC ASSISTANCE

TO BE FILLED IN BY THE EXAMINING PHYSICIAN

HISTORY

ESSENTIAL CLINICAL DATA, WITH DATES, SUPPORTING DIAGNOSIS AND DISABILITY

Fracture of both arms — left arm has plates
screws and wires in left elbow and forearm
Right wrist (Colles) ua.

HEIGHT - FT IN	WEIGHT	TEMPERATURE	PULSE	RESPIRATION	BLOOD PRESSURE	SYSTOLIC	DIASTOLIC
5 | 8	148		/Min.	20 /Min.		12	72

☐ DYSPNEA ☐ CYANOSIS ☐ EDEMA

VISION	WITHOUT GLASSES	WITH GLASSES
R 20/	L 20/	R 20/ 30 L 20/ 20

HEARING: R 2/20 | L 2/20 — RECORD AS NUMERATOR, GREATEST DISTANCE AT WHICH CONVERSATIONAL VOICE IS HEARD; DENOMINATOR 20 feet as normal.

PHYSICAL EXAMINATION (Check ✓ if items are normal; describe deviations from normal)

EYES: discharge; corneal scar, pupils, strabismus; Ptosis; cataract; lesion.	✓
EARS: discharge; drums; mastoids	✓
NOSE: discharge; obstruction; polyps; sinusitis; septal deviation or perforation	✓
MOUTH: Pharynx; caries; dentures; spontaneity of tongue of palate.	✓
THROAT: Tonsils; post-nasal discharge.	✓
NECK: Nodules; thyroid; enlarged veins.	✓
BREASTS: nodules; discharge; tenderness	✓
LYMPHATICS: cervical; inguinal; axil.	✓
HEART: thrills; apex beat; size; sounds; rate; rhythm; murmur; friction rub.	✓
PERIPHERAL VESSELS: Varicose veins; arteriosclerosis; circulation of feet, hands	✓
LUNGS: If tuberculosis is suspected, roentgenogram chest advised. Sputum exam; and examination by chest specialist.	
ABDOMEN: Scars; masses; palpable organs	
HERNIA: Location and type	
GENITO URINARY: Discharge; varicocele; epididymitis, testicular ... any of these	✓

App. 10

(OVER)

PHYSICAL EXAMINATION (Continued)

GYNECOLOGICAL: BREASTS, GENITALIA; VAGINA, CERVIX, UTERUS, ADNEXA	
ANO-RECTAL: PENIS, PROSTATE; HERNIA, RECTUM, PROSTATE = STOOL GUAIAC TEST	
MUSCULO-SKELETAL: EXTREMITIES; GRIP, GAIT; SPINE; DEFORMITIES	Swollen left wrist — left arm and elbow deformed — left elbow tender, painful, and decreased ROM
SKIN: MOISTURE, ERUPTIONS, SCARS; ULCERS	
NEUROLOGICAL: SENSORY, GAIT; REFLEXES; TREMOR; MUSCLE BULK; STRENGTH; RETARDED; COORDINATION	
FUNDI: DISCS; VESSELS; EXUDATES; HEMORRHAGES	

LABORATORY

A recent urinalysis and blood test are required; the other tests should be indicated only.

	DATE OF TEST	NAME OF TEST		REPORT
BLOOD SEROLOGY:				
URINALYSIS:	DATE OF TEST	PROTEIN	SUGAR	MICROSCOPIC
	10/24/95	Neg	Neg	Neg

DIAGNOSIS

INDICATE MAJOR AND MINOR

1. Deformity of left arm and elbow
2. Deformity of right wrist.

PROGNOSIS

- [x] STABLE
- [ ] PROGRESSING RAPIDLY
- [ ] PROGRESSING SLOWLY
- [ ] IMPROVING
- [ ] RECURRING
- [x] PERMANENT
- [ ] CAN BE SUBSTANTIALLY REDUCED OR REMOVED BY TREATMENT

FUNCTIONAL LIMITATIONS

PHYSICAL OR MENTAL LIMITATIONS (If any, list on separate sheet)

Number of hours per day of work, training, or home maker duties permitted:	WORKING CONDITIONS AND TYPES OF ACTIVITY TO BE AVOIDED

RECOMMENDATIONS

Use or state: and give date. Prior approval is required before recommendation is authorized.

DIAGNOSTIC STUDIES

EXAMINATION BY SPECIALIST

HOSPITALIZATION

PROSTHETIC APPLIANCES

App. to

RE EXAMINATION

TREATMENT (continue on separate)

REMARKS

OCT 25 1995

PHYSICIAN

SIGNATURE	SPECIALTY	ADDRESS	EXAMINATION DATE
[illegible]	ED	1235 [illegible]	10/24/95